

# CRIMINAL JUSTICE REFORM, PART I

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## HEARING

BEFORE THE

### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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## CRIMINAL JUSTICE REFORM, PART I

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**Tuesday, July 14, 2015**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:49 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gosar, DesJarlais, Gowdy, Lummis, Massie, Meadows, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Palmer, Cummings, Maloney, Norton, Clay, Lynch, Connolly, Kelly, Lawrence, Watson Coleman, Plaskett, DeSaulnier, and Welch.

Also Present: Representative Jackson Lee.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

I am excited about this hearing. I appreciate this topic and the bipartisan approach in which we are taking on this. This is a vital topic. It affects literally millions of people.

One of the things that we have to recognize, I think, as a Nation is that more than 90 percent of the people who will go to a Federal prison are going to come back out. And we have a duty and an obligation to make some determinations as to how we structure that.

Are we sending the right people to prison? Are we doing the right things once they are there? And what are we doing as a Nation in order to reduce the rate of recidivism to make sure that we are protecting society and rehabilitating those who are in need of some rehabilitation?

I worry that the criminal justice system today is not the system that I think we should aspire to. Some of the States are doing some innovative things, but at the Federal Government side I do think there is more that we can do to reduce the rate of recidivism, to incarcerate those and punish those that need the punishment, but also look after the taxpayer dollars. And the rise and expansion of the system is something that I would call into question and is ripe for an oversight hearing.

And I appreciate the bipartisan nature, bicameral nature, in which we are going to direct this, as we hear from two Senators, two Members from the House of Representatives, and then two Governors. And then we will continue through tomorrow and hear from some others, as well.

Let me put in perspective the Federal prison population and the unsustainable growth rate that we are seeing. From 1940 to 1980, the Federal prison population barely moved. We had roughly 24,000 prisoners between 1940 and 1980. Over the next 10 years, it more than doubled to about 58,000 prisoners. The 1990s saw another 100-percent increase, to 134,000 prisoners. And from 2000 to 2010, it increased roughly 45 percent, to roughly 210,000 prisoners. We now have more than 219,000 Federal prisoners, and the Federal Bureau of Prisons is at 40-percent overcapacity.

The Bureau of Prisons budget has grown right along with the prison population. Federal spending on prisons grew from \$970 million to \$6.7 billion over the last 30 years. From 1998 to 2012, the Bureau of Prisons budget increased from \$3.1 billion to \$6.6 billion. Today, the Bureau of Prisons takes up roughly 25 percent of the Department of Justice budget, but its projections are to quickly get to 33 percent of that budget by the year 2020. This is obviously an unsustainable pace, and something needs to be adjusted.

The good news is that many of the State and Federal officials are taking the issue of criminal justice reform seriously. Our witnesses here today have proposed or enacted a wide variety of legislation aimed at saving taxpayer money, improving public safety, and helping offenders come out of prison ready to become more productive members of society.

Reform efforts have included tackling asset-forfeiture issues, front-end changes in the areas of equitable sentences, behind-the-wall changes to teach prisoners skills to lead productive lives once they get out, and back-end reforms aimed at reducing the rate of recidivism.

On the front end, legislators have proposed altering mandatory minimum sentences for nonviolent criminals. Keeping more juvenile offenders out of prison has been a particular focus, given that imprisonment can dramatically reduce employment opportunities later in life. Increasing the use of nonconfinement alternatives like substance abuse programs, drug courts, and family counseling can give troubled youth a second chance.

One of the more impactful things I did as a Member of Congress is go to visit Congressman Cummings' district. We visited with a group of young men who were trying to get their—and there were women in there, too—who were trying to get their lives back in order. They had made a mistake. They had overstepped their bounds. They had broken the law. They had been sentenced, convicted. They had served those sentences but now had a hard time getting out of that box.

If you are a 22-year-old male with a felony on your record, what are you supposed to do? How are you supposed to get a job? You want to right your life; you have paid your debt to society. Then what do you do? We had better address that if we are going to make this country the premier country that I know that it is.

Another front-end pilot program could give defendants a client choice program, basically giving them an attorney of their choice in place of a public defender, something worth exploring. Canada, the United Kingdom, and Australia use a similar system, and a pilot client choice system is now being tested in Texas.

One of the most important front-end reforms is simplifying the Federal criminal code. There is no unified Federal criminal code at present, and the sprawl of thousands of laws creating Federal crimes leads to accidental and unknowing violations.

Behind-the-wall changes would help prepare prisoners for meaningful lives after their sentences. Some proposals in this area would reduce the use of solitary confinement, which can lead to problems with reintegration into society after prison.

And, finally, back-end reforms have tremendous potential to reduce costs, improve public safety, and give offenders an opportunity to rebuild their lives. Research indicates that spending long sentences in prison worsens recidivism rates among nonviolent and low-risk offenders. And back-end proposals thus attempt to identify low-risk offenders, making sure they attend programming proven to lower recidivism, and then place them into alternative confinement settings, such as halfway houses or electronic monitoring.

Some States, such as Delaware, have taken further steps to assist prisoners by helping them get jobs. Many States no longer allow State agencies to ask about criminal history early in the hiring process so that qualified rehabilitated individuals can more easily gain employment.

Criminal justice reform is an example where Republicans and Democrats in the State and Federal Government are working together to improve the country. I am very much looking forward to this hearing and to ultimately moving legislation that can get to the President's desk.

We appreciate the President's expression of wanting to tackle this topic. It needs to be done so in a bipartisan, bicameral way. That is the spirit in which we gather here today. I do appreciate the effort also of Chairman Goodlatte, who is holding and conducting a hearing simultaneous to this but obviously plays an important role.

With that, I would now like to recognize the ranking member, the gentleman from Maryland, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much.

And I want to thank you very much, Mr. Chairman, for holding this hearing today and then the second hearing tomorrow. And I am also very grateful for the way you and your staff have worked with us over the past 6 months to put these critical hearings together in a truly bipartisan way. People have no idea how challenging it can be to line up such an impressive panel of Members of Congress, Governors, and some of our Nation's most noted experts, so I am thankful.

I first wrote to the chairman in December, and I requested hearings to examine a wide range of factors leading to the deaths of unarmed African Americans at the hands of law enforcement across our great country, including the Federal response to these incidents.

In February, I followed up with specific proposals, including a hearing with officials from the State level, including both Democratic and Republican Governors who have had bipartisan successes. States are sometimes called our Nation's laboratories for re-

form, and they have led the way in addressing underlying problems with our criminal justice system.

I also hosted a bipartisan forum at Howard University, bringing together voices as diverse as Senator Cory Booker, who will be with us today, Senator Rand Paul, Congressman Raul Labrador, and Congressman Hakeem Jeffries, and our own Congresswoman Stacey Plaskett.

For me, this issue truly hit home, literally, as I watched my community in Baltimore torn apart after the tragic death of one of my neighbors, Freddie Gray. Watching the place I have always called home, the place where I was born and my six brothers and sisters were born, where I went to law school and where I raised my family, to see it erupt into violence underscored the urgent need to examine systemic problems facing our criminal justice system at its core.

This, Mr. Chairman, is a landmark hearing for our committee. We have a unique ability to explore criminal justice reform. Our broad jurisdiction allows us to examine policies across all agencies of the Federal Government as well as successful State and local reforms.

As we will hear over the course of these two hearings, the United States has 5 percent of the world's population but we have almost 25 percent of the world's prison population. Senator Booker talks about this so eloquently so often. That is the highest incarceration rate of any country in the world. These statistics are stunning, but they are also very tragic.

Right now, we have an historic moment of opportunity on criminal justice reform. We must strive to turn this moment into a movement. Today, I firmly believe that Congress must act in a bipartisan way to pass comprehensive legislation.

As we review successful State-level policies, we will see that there is no one policy that is a cure-all. Instead, reforms must address the full spectrum of issues, including how people enter the criminal justice in the first place, what happens to them when they are incarcerated, and how they reenter society after release.

Mr. Chairman, you are absolutely right; when somebody gets a record, even if they have never served a moment in prison, they have a record for the rest of their life. My neighbors—I have a lot of them—they come to a job fair; they have a record. There may be 100 employers, and, at best, maybe 5 employers will even interview them with a record. And so they ask the question, how am I supposed to survive? How am I supposed to feed my family? They have already served their time or did whatever they were supposed to do and paid back to society, but now they are stuck.

It must also take into account the racial disparities that plague our system and how young people, women, and other populations are uniquely affected.

Today, we will hear about the SAFE Justice Act, which was introduced by Chairman Sensenbrenner of the Subcommittee on Crime, and Ranking Member Scott, the ranking member of the Committee on Education and the Workforce. This is a bipartisan, balanced bill that implements policies based on evidence—based on evidence. And these proposals have proven successful at the State level.



The SAFE Justice Act is truly bipartisan and broad-based. It reduces the duplication of Federal and State charges, clarifies original congressional intent regarding certain drug sentences, and encourages alternative courts, like drug and veterans courts. It also reinvests savings—and this is key, Mr. Chairman—it also reinvests savings to strengthen communities and ensure that law enforcement officers have what they need to do their job effectively.

We will also hear about State-level efforts to, “ban the box” and prevent employers from asking about criminal histories at the outset of the application process. We cannot—we cannot—perpetuate a system in which people have nowhere to go other than a life of crime.

I commend the President for his actions yesterday to commute the sentences of 46 drug offenders whose punishments did not match the crimes committed. But we also need policies to help individuals who leave prison, as you said, Mr. Chairman, to be considered for jobs based on their merits and fitness for those positions rather than their criminal record.

Currently, 18 States and more than 100 cities and counties across the political spectrum have taken steps to implement these types of fair-chance hiring practices. As a matter of fact, my city of Baltimore is one. Major private-sector companies, like Walmart, Target, Home Depot, the Koch Industries, are also recognizing the benefits of these efforts, and they have implemented their own fair-chance hiring policies. For that, we should all be grateful.

For these reasons, I am very pleased to be working with Senator Booker on bicameral legislation to bring these policies to the Federal Government.

And so I want to thank all of you for being here today. I am eager to learn more about your efforts as we work to turn this historic moment into a bipartisan movement.

With that, I yield back and thank you.

Chairman CHAFFETZ. I thank the gentleman.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

Chairman CHAFFETZ. We are also pleased that our colleague Representative Sheila Jackson Lee of Texas and, soon to be, Representative Steve Cohen of Tennessee—we would ask unanimous consent that they be allowed to sit in on today’s hearing.

Hearing no objections, so ordered.

We will now recognize our first panel, and I am very honored that they would set aside their time and come testify with us here in the Oversight and Government Reform Committee.

We are very pleased to have the Majority Whip, the Honorable John Cornyn, the United States Senator from the State of Texas, who serves on both the Senate Finance and Judiciary Committees. He was also a district judge, served on the Texas Supreme Court and as Texas Attorney General.

We have the Honorable Cory Booker, United States Senator from the State of New Jersey, a Rhodes Scholar, a law degree from Yale, and a very distinguished mayor.

And we are honored to have you here, Senator Booker, as well.

The Honorable Jim Sensenbrenner serves in the United States House of Representatives in the Fifth Congressional District of

Wisconsin. He is the former chairman of the House Judiciary Committee, somebody we have been working very closely with on a myriad of legislation, and has a passion for this topic.

We are also honored to have the Honorable Bobby Scott, United States Representative serving the Third District of Virginia. We also appreciate your service in the National Guard and the United States Army Reserve. Very passionate about this topic, very well—works well with other Members of Congress. And this particular person, this Representative thanks him for the spirit in which he enjoins in this conversation.

We were also scheduled to have Cedric Richmond, who we were hoping to be here. He was invited to be here, was planning to be here, but had some mechanical problems with some airplanes. And he is going to be sorely disappointed that he was not able to be here, but his entire written statement will be entered into the record.

[Prepared statement of Mr. Richmond follows:]

[For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>

Chairman CHAFFETZ. I would ask unanimous consent that we waive committee rules and bypass the swearing-in that we normally do for all witnesses.

Without objection, so ordered.

With that, we would now like to recognize the Majority Whip of the United States Senate, Senator Cornyn.

**STATEMENT OF THE HON. JOHN CORNYN, A U.S. SENATOR  
FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman, for holding this important hearing. And, Ranking Member Cummings, thank you to both of you for allowing me to appear before this important committee.

Congressman Sensenbrenner says I have been issued a temporary visa, and the House doesn't tolerate overstays, so I will be brief.

But this is a very, very important subject and a very, very important moment, I believe, for our country. How do we reform our Federal criminal justice system to increase public safety and reduce cost and to give the deserving a second chance?

Over the last 25 years, we have seen unprecedented reductions in crime in the United States for a variety of reasons. The nationwide crime wave of the late 1980s and early 1990s is no more. And we should take a moment to recognize the efforts of law enforcement to improve public safety and strengthen our communities.

But that, of course, does not mean our criminal justice is perfect or that it doesn't need reform. Far from it. Like anything else, the criminal justice system requires occasional tune-ups and reforms to ensure that it's working to achieve its goals.

And right now the Federal Government, as you acknowledged, Mr. Chairman, spends billions of dollars incarcerating individuals while doing little or nothing to address the underlying cause or to better prepare them for their eventual release into civil society. We can and we must do better.

As a former attorney general of my State, I am proud to say that we have been one of those laboratories of democracy that I think has provided a useful model for Congress as we consider making changes to the Federal criminal justice system. I actually think that is a better way to do it. Let the States experiment, and we can learn from that and then generalize it to the Nation as a whole, rather than start at the Federal level and then have things dribble down to the States.

But in 2007 Texas lawmakers confronted a problem similar to the one facing us today. They had a major budget shortfall, an overcrowded prison system, and high rates of recidivism.

We have always been tough on crime in Texas, but in 2007 the State leaders decided to get smart on crime. Instead of just building more prisons and hoping that would somehow fix the problem, they decided to try a different approach, scrapping construction plans and instead funding recidivism-reduction programs aimed at helping lower-risk offenders turn their lives around and become productive members of society.

Texas gave inmates the option of earning time credits to spend a portion at the end of their sentence at home or in alternatives to incarceration. The results speak for themselves. Between 2007 and 2012, our State's overall rate of incarceration fell by 9.4 percent. Our total crime rate dropped by 16 percent. And we saved more than \$2 billion and closed three prisons in the process.

Because of this success with the Texas experience, I am proud to join my colleague on the Judiciary Committee, Senator Whitehouse of Rhode Island, where similar State-level reforms were made in sponsoring something we call the CORRECTIONS Act that I know the chairman has been pursuing the analogue here in the House. This bipartisan legislation would take many of these lessons that we learned in Texas and Rhode Island and apply them to the Federal system.

The CORRECTIONS Act will help restore an important part of our criminal justice system, something that we have almost forgotten, and that is rehabilitation. When I went to law school, I was taught that this was one of the important cornerstones of our criminal justice system, that somehow, for the deserving, for the ones who actually wanted help learning skills and reentering civil society, to help them do so, and that it was to their benefit and our benefit that that happen. We have almost completely forgotten about that part of our criminal justice system, and this legislation would help restore that important concern.

The average Federal prisoner will spend less than 3 years behind bars, meaning that almost every offender will one day be released. By helping them turn their lives around—and, again, not everyone is going to take advantage of this opportunity. Not everyone should have the opportunity, particularly high-risk and super-violent criminals. But if we can, for those who deserve the opportunity, low- and medium-risk prisoners, if they will take advantage of the opportunity to gain new skills and turn their lives around, then we ought to work with them and help them to do so.

So these programs include things like prison jobs programs, drug rehabilitation, general education, vocational training, life skills

management, technical education, mental health treatment, faith-based programs, and victim impact courses.

Mr. Chairman, I will just close with an experience that I had recently visiting a Texas prison system. I was viewing some of the programs that they were using there, like the ones I have mentioned and the ones the CORRECTIONS Act is modeled on. But I remember going to a shop class in this Texas prison, where the instructor told me that some of the inmates that were in his shop class did not even know how to read a tape measure. So what alternatives do they have? How prepared will they be once they are released from prison?

So for those low-risk and medium-risk prisoners who want to take advantage of the opportunity, we ought to give them an opportunity to get a better education, to get better prepared, to deal with their drug or alcohol or other addictions, their mental health problems. But if we can and they are willing, I think we will all be better off.

It costs \$30,000 a year to incarcerate an individual in prison and less than \$8,000 to keep them on a prerelease custody like home confinement and the like.

So I very much appreciate the opportunity to come here and speak to this important committee. I thank you for your interest in it. And I agree with the ranking member; this is a moment. With the President focusing on this issue, with the Senate Judiciary Committee and leading Members like Senator Booker in a bicameral, bipartisan way working on this, I think we can actually produce something that we can all be proud of that will help public safety and help better prepare people released from prison to reenter civil society.

Thank you very much.

[The statement of Senator Cornyn follows:]

[For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>]

Chairman CHAFFETZ. Thank you, Senator. As is customary, we would certainly after your comments excuse you. With the busy schedule that we have on both sides of Capitol Hill, we appreciate your comments and participation here today.

With that, we will now recognize Senator Booker.

#### **STATEMENT OF THE HON. CORY BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator BOOKER. Good morning, Chairman Chaffetz and Ranking Member Cummings. I just want to let you know it is a privilege to be able to sit before you today and talk about something that is, I think, of the utmost importance to our Nation.

I want to also just give a lot of gratitude to my colleagues in the Senate in both parties who have made this a principal priority of theirs, to see reform in this area, people like Mike Lee and Senator Cornyn, people like Rand Paul and Senator Cruz. These folks have become my friends in a very short time in the Senate because of their steadfast commitment to these issues.

I want to just give a lot of gratitude to you, Chairman. You also have become a friend through this process and have had the courage to stand up on these issues in a way that, to me, is inspiring.

I have heroes around me, from Representative Cummings to Bobby Scott, Representative Scott, who have been friends of mine for a long time and people I look to as beacons of hope in the United States Government that could help end what I think is a national nightmare.

In this experience, I have had partnerships now with everybody from Mark Holden, who is the Koch brothers' senior counsel, to Newt Gingrich to Grover Norquist and a number of other organizations, from the Manhattan Institute to even people in The Heritage Foundation, who all understand something has tragically gone wrong in our Nation in the last 40 years.

If you were to go back to talk to our Founders and were to inform them that a state government actor was going to take and seize the liberty of Americans at the extent that we have, that the ideal of a limited government would grow so massive and so bureaucratic that the lives of so many would be taken into this government system where they would surrender their liberty, surrender their freedoms, that would be cause enough for a revolutionary spirit in America.

But think about where we are right now. In our Nation, our over-criminalization has grown so much that between 75 million and 100 million Americans, approaching one in three, have an arrest record, overwhelmingly for nonviolent offenses. We are a Nation that has so criminalized our culture that we now have a challenge. One out of every 142 Americans is now actually in prison. One out of every 32 of us is either in prison or on parole.

And that means that 6.7 million adult men and women, about 3.1 percent of the total U.S. Population, are now nonvoluntary members of America's correctional community. Think about this size. This is larger than 36 of our United States. If this was a State, it would be right behind Massachusetts in total population. Our Federal prison population has simply exploded. There is no nation on Earth nor ever in the history of humanity that has imprisoned this many of its own people.

In the last 30 years, we have gone astray from where our industrial peers are, from a period when we were on par with our industrial peers in incarceration to now an explosion of over 800 percent over the last 30 years of our Federal prison population. In 1980, fewer than 25,000 people were incarcerated. Today, that number has increased to over 209,000—again, which is larger than the population of Salt Lake City.

The growth of our Federal prison population comes at a cost. We have seen over the last decades a lack of investment in roads and bridges and tunnels; we have seen a crumbling of our infrastructure. But yet we have come up with the resources to invest in our prison population.

In infrastructure alone, between the years of 1995 and 2006, this great Nation, while not repairing roads and bridges at the rate that we know we need to, with an infrastructure debt of \$3 trillion, what we did instead was invest in the growth of our prison indus-

try. Between those years of 1995 and 2006, we built a new prison in this country every 10 days.

This has been a massive explosion at a cost to taxpayers that is simply stunning. Alone, we spend about a quarter of a trillion dollars annually on this incarceration. In addition to the capital costs, in addition to the infrastructure costs and the investment, this has drained our Treasury and hurt the American people.

Senator BOOKER. But the pain is beyond the dollars and cents. The pain is really in the impact it is having on our country as a whole. It is estimated that the U.S. poverty rate between 1980 and 2004 would have been 20-percent lower if not for mass incarceration.

All this conversation in a bipartisan way about poverty, but we know that without this overincarceration we could have reduced poverty rates 20 percent. Why? Because when we incarcerate people, overwhelmingly for nonviolent offenses—74 percent of our imprisonments are nonviolent offenses—we then saddle those people when they are out of prison with economically crippling collateral consequences.

The American Bar Association identified 46,000 collateral convictions that we place upon individuals for nonviolent crimes. Some of those are crimes that present and past Presidents have admitted to doing. We now have a Nation that, if you come out with a nonviolent drug offense, you can't get a loan from the bank, you have difficulty getting a job, difficulty getting a Pell grant, business licenses are denied you. Forty-six thousand limitations on your liberty and freedom that undermine your ability to produce economically.

We now know that poverty is a reality, and this is one of the root causes. But also a report from the Center for Economic Policy and Research concluded that, once released from prison, that ex-offenders' prospects for being employed are dramatically decreased. In 2008 alone, ex-offender employment losses to our economy, their productivity that would have contributed to us all, was the equivalent of 1.5 million to 1.7 million workers, costing us \$57 billion to \$65 billion annually.

That cost of putting a prisoner in jail of \$29,000 a year, which is often quoted, does not capture the crippling impact this has had on our economy, driving poverty and limiting our GDP.

Our Nation has not reached its full potential, it has not elevated those ideals of freedom and liberty, if we cannot address this problem. With just 5 percent of the globe's population but one out of four human beings in prison on Earth being here, this is a self-inflicted wound which is not necessary.

I spent almost 8 years of my life as the mayor of a big city. The number-one issue—the number-one issue—my pollsters who worked for other mayors and in other States said they never saw a single-issue community like ours—was public safety. There is nobody in Congress who has more of an urgency to stop crime in this country than I do. I go home still to Newark, New Jersey, living in one of our Nation's poorer census tracts, and still have people talk to me about this issue.

But there is a consciousness and an understanding that what happens to our country when we incarcerate people is we often re-

turn them to our streets more dangerous and more likely to go into crime because we are cutting off their opportunities—but also because of who we incarcerate.

We in this Nation, if you examine our jails—and, as I talk about the cost of prisons, please understand there are 19 times the admissions of Americans into our jail systems than there are to our prison systems. And, overwhelmingly, the people we put in jail are people with mental health challenges, are people with addictions, are people who remain in jail often just because they are poor. We think we have gotten rid of debtors prison, but it is alive and well in our Nation. And there are people that are disproportionately minorities. When they get out, our system is not treating their addiction, not focusing on their mental health challenge. Our systems often put them in a position where those problems and challenges are even more aggravated.

And, in fact, we engage in practices in prisons and jails that actually make people far more dangerous. The routine practice, especially for juveniles, of putting them in solitary confinement is considered by many torture. Other nations have banned the practice. But yet we do things that actually hurt and traumatize children and young adults, putting them back on our streets, often more likely to have encounters with the law or, worse, to engage in crime or violent crime.

We have a situation in our country that is out of control, but it does not have to be, because there are models all around our Nation—especially exciting are ones in red States—that have moved far ahead of the Federal system and have shown us a way. From Georgia to Texas, we are seeing that you can massively reduce your prison population and reduce crime at the same time, relieving taxpayers of this burden, affirming ideals of liberty, addressing racial disparities in incarceration, and empowering the local economies.

We cannot have a Nation where we are raising children of incarcerated adults, which is happening now. One in 125 American children had an incarcerated parent. One in nine black children have an incarcerated parent now.

And please understand, that has a generational consequence to it. Right now, we know that with 2.7 million American children who have a parent behind bars that that impact on them is significant. A child with an incarcerated father is more likely to be suspended from school than a peer without an incarcerated father, 23 percent compared to 4 percent. Data from the Economic Mobility Project finds that a parent's income is one of the strongest indicators of a child's economic mobility. Forty-two percent of children who start at the bottom fifth of income distribution brackets will stay there. Children who have parents that are removed from them that end up in foster homes, children that have an incarcerated parent are more likely to go to prison themselves.

I want to conclude to say that there has to be an urgency on this problem, and we can't fall into solutions that actually aggravate what is going on. Whether it is the desire to add more mandatory minimums, further take away our justice system from what Americans imagine it to be, with judges, to the justice system we have now, where 98 percent of criminal convictions are done by plea bargain.

We need to have solutions to this problem that do not aggravate racial disparities, like basing earned time on static offenses, when we know that African Americans and whites have no difference, for example, in marijuana use but are convicted or arrested for it about 3.7 times longer.

Our solutions to this problem must work against ideals of vengeance and retribution and focus now on justice and fairness. They must not do more harm to individuals put into the system—aggravating racial bias, the disease of addiction, and mental illness. Instead, our system must be about rehabilitation, recovery, healing, and empowerment.

There is a way forward, and I am hoping that this great Congress, this august body, that believes in freedom and liberty, that understands the basic values of limited government, that we will as a Nation embrace the solutions we already see working and that the Federal Government can catch up and, indeed, lead to a day where the liberties of its people are not surrendered in a way that is so out of step with our values and the rest of the world.

Thank you, Chairman.

[Prepared statement of Senator Booker follows:]

For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>

Chairman CHAFFETZ. Thanks, Senator. We do appreciate it.

We are now pleased to hear from Chairman Sensenbrenner.

Chairman, you are now recognized.

**STATEMENT OF THE HON. F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. SENSENBRENNER. Thank you.

Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. Thank you for the opportunity to testify in support of criminal justice reform.

And thank you, Mr. Chairman, for holding these discussions and for your extensive work on prison reform.

I am proud to be joined today by Representative Bobby Scott, whom I have had the pleasure of working with on the House Judiciary Committee's Over-Criminalization Task Force.

Beginning in the spring of 2013, Representative Scott and I thoroughly examined issues relating to the scope of mass incarceration, the dramatic growth of the Federal criminal code, and evidence-based programs for reform. We heard from groups and organizations as diverse as Families Against Mandatory Minimums, Right on Crime, Heritage Foundation, and the ACLU, all of whom recognized the need to respond to reduce the size and cost of Federal corrections policies.

Over the past three decades, America's Federal prison population has more than quadrupled, from a half-million in 1980 to more than 2.3 million today. Prison spending has increased by 595 percent, a staggering figure that is both irresponsible and unsustainable.

And yet this increased spending has not yielded results. More than 40 percent of released offenders return to prison within 3



years of release, and in some States recidivism rates are closer to 60 percent. Several studies have found that, past a certain point, high incarceration rates are counterproductive and actually cause the crime rate to go up. Especially among low-risk offenders, long prison sentences increase the risk of recidivism because they sever the ties between the inmate and his family and his community. These are the ties we need to help reintegrate offenders as productive members of our society.

These severed ties are also at the heart of the moral case for reform. It is not just the people in prison who are paying the punishment for their crimes. Mass incarceration tears families apart and deprives children of their fathers and mothers. It likely means the loss of a job, possibly a home, and any support he or she had within the community.

And that is where we are with our sentencing policy. We are spending more, getting less, and destroying communities in the process. The system is broke, and it is our job to fix it.

Fortunately, there is a better way. In recent years, 27 States, particularly conservative red States, have enacted substantial criminal reforms to their criminal justice systems. Cumulative cost savings have exceeded \$4.6 billion. Many of the States have seen a corresponding drop in crime. Their experience proves that we can reform the criminal justice system without compromising public safety.

This brings me to the SAFE Justice Act. The SAFE Justice Act brings together some of the best ideas from the States and current proposals. It addresses both the front and back ends of our criminal justice system, but it does so in a targeted way rather than across-the-board cuts. It is an evidence-based approach that draws heavily from the successes of numerous States which have led the Federal Government in adopting comprehensive reforms.

Among other things, the SAFE Justice Act will: first, rein in rampant overregulation by Federal agencies by forcing reviews of regulations with criminal penalties; second, focus drug mandatory minimums on leaders, managers, supervisors, and organizers of drug trafficking organizations rather than low-level offenders; third, incentivize completion of evidence-based prison programming and activities through the use of the earned time credit; fourth, improve government accountability by charging the Department of Justice and the Bureau of Prisons with collecting key outcome performance measures; and, fifth, provide law enforcement with critical tools to help keep communities safe by expanding access to training and safety equipment and health and wellness.

Our system cannot continue on its current trajectory. It is not only fiscally unsustainable but morally irresponsible. Now is the time for criminal justice reform, and the SAFE Justice Act delivers the change necessary to enact fairness in sentencing, reduce the taxpayer burden, and ensure increased safety and prosperity of communities across the country.

As a critical step in this direction, I hope the committee will appreciate the thoughtful, evidence-based policy options we have put forward. And it is my hope that Congress can continue to work in a bipartisan, bicameral manner to advance this comprehensive legislation.

Thank you for hearing me out.

[Prepared statement of Mr. Sensenbrenner follows:]

For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>

Chairman CHAFFETZ. Thank you, Chairman. We appreciate your leadership on this issue.

I will now recognize the gentleman from Virginia, Representative Bobby Scott.

**STATEMENT OF THE HON. BOBBY SCOTT, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF VIRGINIA**

Mr. SCOTT. Thank you, Mr. Chairman. I want to thank you and Ranking Member Cummings for including me in today's hearing.

Mr. Chairman, in both the Judiciary Committee and Oversight Committee, your commitment to improving the Federal criminal justice system has been a major factor in leading us to examine accountability-based approaches to rein in soaring costs. And, as you mention, that is particularly in light of the low returns on our investments. And your work in prison reform to reduce recidivism has certainly been extremely helpful.

Ranking Member Cummings has similarly led the way in ensuring that our law enforcement officers and communities they serve receive the resources and support they need to work collaboratively with crime prevention, intervention, and reentry policies.

Unfortunately, Mr. Chairman, rather than this rational, thoughtful approach, too many politicians across the country have chosen to play politics with crime policy by enacting so-called tough-on-crime slogans like, "Three strikes and you're out," or rhymes like, "You do the adult crime, you do the adult time."

As appealing as these policies may sound, their impact has overloaded our prisons to the numbers that have already been given and also to the point where some recent studies have concluded that our overincarceration is actually counterproductive, destroying so many families, wasting so much money, having so many people with felony records, meaning that it generates more crime than it stops.

We know that we have a problem. And so, faced with overcrowding prisons, no reduction in recidivism, and wasted money, Chairman Sensenbrenner and I were chosen unanimously by our colleagues on the House Judiciary Committee to lead the Over-Criminalization Task Force to actually do something about it.

The task force undertook a comprehensive review of Federal legislation—charging, sentencing, and reentry policies. It applied the work of the States which have implemented bipartisan, evidence-based reforms that have reduced overcrowding and taxpayer spending while preserving, even increasing, public safety.

Over the course of a year and a half and 10 hearings, the task force heard from key stakeholders, including the Department of Justice, the Federal Public Defenders, the Judicial Conference, and the Sentencing Commission, as well as academics and expert organizations from The Heritage Foundation to the ACLU.

As the task force consensus work product, we introduced the bipartisan SAFE Justice Act, which improves safety and saves money

by applying State-tested, evidence-based approaches to diversion sentencing, recidivism reduction, rehabilitation programs, reentry, and supervision.

During the inception and duration of the task force, my colleague Mr. Sensenbrenner and I were not interested in playing politics with crime policy. We did not conduct polls to measure the popularity of slogans and sound bites that the bill could generate. To the contrary, we focused our work on examining evidence-based approaches that increase safety, accountability, fairness, and efficacy, including ones successfully implemented on the State level.

Now, 32 States have already reduced both their crime rate and imprisonment rate over the past 5 years, including Texas, Wisconsin, Rhode Island, Georgia, South Carolina, New York, resulting in a cumulative cost savings exceeding \$4 billion. They have reinvested in prison alternatives better at breaking the cycle of recidivism. And, today, research-based, State-tested, and community-based approaches enjoy support from Democratic and Republican Governors. Many have branded their approach as, “right on crime.”

To address this crisis, the bill begins by focusing on prevention and early intervention. We need to put evidence-based, cost-effective approaches into crime reduction at the community level.

First, we can invest in law enforcement at the local, State, and Federal level. Data show that it is not the length of the sentence that deters crime but the certainty of being caught. We must invest in more law enforcement officers and correction officers, increasing their pay, reimbursing them for pursuing advanced degrees that aid in the performance of their duties. We have to improve officer safety by ensuring they have bulletproof vests, pepper spray, and lightweight hemorrhage kits to ensure that they return home to their families at the end of their shifts. Implementing a National Blue Alert system to ensure a swift and certain response when one of our officers is killed in the line of duty is also necessary and long overdue.

Now, the bill also improves public—this will also improve public safety and community trust. More law enforcement officers means greater opportunities to focus on community-based policing. Law enforcement officers play a critical role in putting evidence-based and cost-effective approaches to crime prevention, intervention, and reduction into play at the community level when have you full community involvement.

As lawmakers, we must engage community leaders, ranging from law enforcement to educators to health and mental health agencies, social service providers, including faith-based and community organizations, to identify the community needs with regard to youth and gang violence prevention and develop comprehensive plans to address these needs.

Research has demonstrated that having a representative police force and investing in things like police athletic leagues and other programs that builds strong community ties not only will lower the crime rate and allegations of racial profiling but will cultivate trust, build mutual respect and fairness, and improve the working relationship between the officers and the communities they serve.

Turning to criminal law, the Federal Government has added more than 4,500 new criminal penalties over the past few decades,

many of which lack proof of mens rea, or criminal intent, which means that many people are prosecuted when they did not even know they had committed a crime.

It has gotten so far out of hand we do not even have an accurate count of how many Federal crimes there are. In fact, our appetite for overcriminalization has swept in many types of conduct which have historically been punished at the State level or with a fine or civil punishment.

It is also clear that we have to stop bringing State crimes and civil infractions into Federal court. Why should carjacking be a Federal crime? And can't some of the regulatory crimes be sanctioned with civil fines rather than criminal convictions?

Once in court, our bill creates a Federal problem-solving, evidence-based court programs, such as drug courts, mental health, substance abuse, and veterans court programs, to divert non-violent, low-level, first-time offenders from prison. Research has shown that providing these types of offenders with the help they require and addressing the underlying issues that led them to violate the law provides a much greater return on investment than just simply locking them up.

The bill also reforms our sentencing laws. As my colleague Mr. Sensenbrenner discussed, this is yet another area in which the States have led the way, particularly in mandatory minimums in the drug context.

As of fiscal year 2014, approximately two-thirds of convicted drug offenders who were convicted of offenses in Federal court were convicted of offenses carrying a mandatory minimum of some sort, even though data from the Sentencing Commission tells us that a vast majority of them are the lowest-level, nonviolent offenders, not the kingpins or leaders for whom these penalties were intended. Our bill restores the original congressional intent on these penalties and applies the evidence-based approach from the States.

Once an individual is sentenced to prison, the bill ensures that time spent in prison is rehabilitative and will aid offenders in successfully reentering society. Following your work, Mr. Chairman, on prison reform, Chairman Sensenbrenner and I incorporated that work into the SAFE Justice Act as one of the key pillars.

The research shows that providing incentives to inmates to complete educational, vocational, substance abuse, mental health, and traditional programs will help reduce both recidivism and the amount of money spent on the Federal prison system. State experience and data also show that unless and until we invest in research-based methods to address underlying issues we cannot be surprised if the cycle of recidivism continues.

Finally, by changing the incentives and motivation for offenders on supervised release, we can ensure that swift and certain sanctions for violations are handled accountably and effectively. Unnecessarily and often counterproductive incarceration is exchanged with other kinds of penalties. We know that if you revoke someone and send them to prison you destroy whatever progress they have made in their rehabilitation. Moreover, by measuring the recidivism rates of the halfway houses and probation officers nationwide, we can hold these facilities and officers accountable for their role in reducing risk factors for recidivism.

And, Mr. Chairman, as I have indicated, the provisions of this bill will save money and reduce crime. All of the new initiatives will be funded by the cost savings, so the bill can essentially pay for itself.

So I look forward to continuing the work of you, Mr. Chairman and the Ranking Member, Mr. Cummings, on moving this bipartisan bill forward. It incorporates the work of the Over-Criminalization Task Force. The bill has strong bipartisan support because it reduces crime and saves money by investing in crime prevention, reducing the overreach in the Federal criminal code, improving policing, reforming sentencing, improving rehabilitation in our prisons. And it will reform our criminal justice system into one that is safe, accountable, fair, and effective.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Scott follows:]

For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>

Chairman CHAFFETZ. Thank you.

I thank the two House Members and the two Senators for their good work and their insight today.

We are going to go into recess for 5 minutes while we reset for the two Governors who will be joining us. We stand in recess.

[Recess.]

Chairman CHAFFETZ. The committee will come to order.

We are pleased to have our second panel of distinguished witnesses. These are Governors who have actually put actions in place in their States and are making a real difference in their States. It has been notable that we have seen that and heard that at the State level and that has percolated up here into Congress. We are honored that they would take the time and make the effort to provide their expertise here with us today.

We are pleased and honored to have the Governor of the State of Delaware, the Honorable Jack Markell. We are also pleased to have the Honorable Robert Bentley, the Governor of the State of Alabama.

And, at this time, I would actually like to yield to the Congressman from Alabama, Mr. Gary Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

It is a distinct pleasure to introduce the Governor of the great State of Alabama, Dr. Robert Bentley.

Dr. Bentley had a distinguished medical career as a dermatologist in Tuscaloosa, taking care of many of the University of Alabama coaching staff, and served in the State legislature from 2002 to 2010, at which time he was elected Governor of the State of Alabama.

It is a pleasure to have you here, sir.

And I yield back.

Chairman CHAFFETZ. Thank you.

We again thank you both for being here.

I am going to ask unanimous consent that we waive the committee rules for the swearing-in.

Without objection, so ordered.

We again appreciate your testimony here today.

Governor Bentley, we will start with you and recognize you for your opening statement.

#### **STATEMENT OF THE HON. ROBERT BENTLEY**

Governor BENTLEY. Good morning. Chairman Chaffetz and Ranking Member Cummings, Congressman Palmer—and thank you for that introduction—and members of the committee, thank you for inviting me to speak on behalf of the people of Alabama.

Since I took office in 2011, prison reform has been a priority. It is not a topic that you often hear a Republican Governor talking about, but, as the leader of Alabama, it desperately needed my attention.

The number of inmates incarcerated in Alabama's prisons has significantly increased over the past two decades. Alabama's prison system is currently at 195-percent overcapacity, housing nearly 25,000 inmates in facilities designed to hold approximately 13,000. Our officer-to-inmate ratio is 10 to 1—this is twice the national standard—which creates difficult conditions for officers who work to maintain order inside the walls of Alabama's 28 prisons.

In June of 2014, Alabama launched the Justice Reinvestment Initiative. The JRI is a partnership between the Department of Justice Bureau of Justice Assistance and the Pew Charitable Trusts. With support from the Council of State Governments, the goal of JRI is to generate savings that States can reinvest in strategies that will increase public safety while holding offenders accountable for their crimes.

Over the course of a year, the Alabama team, composed of more than 30 experts, examined data, reviewed laws, and met with stakeholders to conduct a comprehensive analysis of our State's criminal justice system. Some areas included prison admissions and length of stay, corrections and parole processes, community corrections, and recidivism rates.

The team developed recommendations for the 2015 legislative session, and we passed important criminal justice legislation into law. Alabama's legislation includes policies to strengthen community-based supervision, to prioritize prison space for those who have committed violent crimes, and promote services and treatment for people receiving treatment and supervision in the community.

The legislation is expected to reduce the State's prison population by more than 4,200 people in the next 5 years and to avert more than \$38 million in future costs for prison construction. It also is to provide for supervision of 3,000 more parolees. America is a great place for second chances, and this legislation helps those paroled with the tools necessary for a successful second chance at life.

This historic legislation would not have been possible without two of our Alabama legislators, who worked extremely hard on this legislation, State Senator Cam Ward and State Representative Mike Jones, who is with me here today. I want to publicly thank them for all the hard work that they did and their partnership towards this prison reform.

The JRI process and the legislation passed in 2015 are major steps towards prison reform.

A few weeks ago, I created the Alabama Criminal Justice Oversight and Implementation Council to further our reform efforts. The council is charged with implementing this legislation. Specifically, the council will develop policies and guidelines for treatment programs in community correction programs. It will coordinate ongoing meetings with criminal justice stakeholders to help those involved in reform efforts. And, finally, it will provide leadership to ensure money is spent wisely and effectively.

In Alabama, we have taken meaningful action to improve our criminal justice system and have chosen to no longer conduct business as usual with our prisons. The old adage of “lock them up and throw away the key” isn’t effective for those being sent to prison or those who have to operate a prison.

States can be laboratories for change, creating unique opportunities that can better address a problem. I believe that Alabama can be a model for prison reform for the rest of the Nation.

I want to thank you for letting me be here with you today, to testify before you. And in a few minutes, I will be happy to answer some questions.

[Prepared statement of Governor Bentley follows:]

For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>

Chairman CHAFFETZ. Thank you, Governor.

Governor Markell, you are now recognized.

#### **STATEMENT OF THE HONORABLE JACK MARKELL**

Governor MARKELL. Well, Chairman Chaffetz and Ranking Member Cummings, thank you for inviting me to be a part of today’s discussion about one of the most important areas in which our laws have to change so that we can maximize opportunity for all of our citizens and for the country.

And I want to thank Governor Bentley for speaking out about these issues.

And I want to thank the Obama administration for spotlighting these issues this week as well.

Before I tell you about our corrections system today and about the policies we are pursuing and must pursue in Delaware and across the country, I think it is helpful to start with a few key facts. Less than 25 years ago, there were fewer than 700,000 people that populated the entire State and Federal Prison System in our country. By the end of the last decade, 700,000 was the number of people that we were releasing from that system in 1 year. And our prisons, as Governor Bentley was talking about, are over capacity.

Ninety-seven percent of the people in our prisons are coming out, and as they reenter our communities, the reality of stubbornly high rates of recidivism set in. That impact is most severe in our minority communities. The number of African American men with a criminal record approaches 80 percent in some major cities across the country. About 6 out of 10 inmates in Delaware are persons of color.

And once we have sent them to prison for the first time, often for a nonviolent offense, many of them are locked out from mean-

ingful employment for the rest of their lives. Consider the impact of that on their families and their communities.

And, finally, corrections costs have skyrocketed across the country. In Delaware, we spend more than \$270 million a year annually, which is about \$36,000 per year for every incarcerated adult.

Now, keeping people safe must be a top priority of any government. And there are those who belong behind bars, and it is worth every penny that we spend to keep them there. But the most expensive solution is not always the smartest solution, and this is particularly the case for nonviolent offenders and for individuals challenged with addiction who need treatment more than they need a prison cell. It is especially the case for defendants and probationers whose infractions, like missing appearances and appointments, mark them as irresponsible but not dangerous.

So before making decisions about criminal justice investments, we have got to ask ourselves, will this make our community safer, and is this the best investment for prosperity? We have an opportunity, but we also have a moral and economic imperative to implement practical solutions to our corrections challenges.

Now, in Delaware, with the support of a bipartisan group of legislators, we have begun to shift to a new approach that is driven by our complementary goals of making better use of our corrections resources and making it more likely that ex-offenders will contribute to society rather than re-offend. It starts in Delaware, as Governor Bentley mentioned, with the Justice Reinvestment Act. I signed it in 2012. And that was designed to help ensure that we treat those who enter our criminal justice system in the most effective way.

For example, our courts now use a risk-assessment tool to identify defendants who are good candidates for pretrial release or community-based supervision. You know, remaining in the community enhances a defendant's chances of success in the long term. And over the last 12 months, our population in custody has dropped by 3 percent, mostly among pretrial detainees.

Most offenders in Delaware are being assessed for both risk and need when they enter custody. In cooperation with George Mason University, we are implementing a risk-needs tool. And that assesses the offender's risk and need level, and it matches the offender with an appropriate level of intervention. And our goal is to extend this assessment to every person in detention so that services, especially those for mental health and substance abuse, are available immediately, even before trial.

In addition, the law allows judges to use a risk and needs assessment as a factor in sentencing, and it allows offenders to reduce their sentences by completing programs that are proven to reduce recidivism. That provides an incentive for successful completion of these programs, which place offenders back in the community when they are prepared for reentry.

And one of the first steps that I took as Governor upon entering office in 2009 was to create what we call IADAPT, Individual Assessment, Discharge, and Planning Team. It is a multi-agency reentry program. There are five executive branch agencies: Department of Corrections, Labor, Education, Health, and Social Services, and Housing. They came together to share information on offenders



to create an individualized reentry plan that includes employment support, healthcare, and housing.

Now, the help that the offenders receive is really very practical. They are enrolled in Medicaid, if eligible. They are provided with identification documents and transportation vouchers. And they are connected to people that they can rely on for support as they seek housing and employment. Now, we know that employment status is one of the best indicators of whether somebody is going to re-offend, so we have got to give ex-offenders a fair opportunity to earn and to keep a job.

So even seemingly small steps can make a big difference. For example, in Delaware, we passed bipartisan legislation to eliminate mandates that cause nonviolent offenders to lose their driver's license, even when their crime isn't related to driving. So, in other words, previously, many offenders, even if their crime had nothing to do with driving, they could not get their driver's license when they came out. And we wanted to ensure that they can travel to and from work.

And as a result of a change in that law, nearly 800 nonviolent offenders each year are having their driver's licenses returned after being released. We have also eliminated the automatic suspension of driver's licenses for Delawareans who fail to pay fines for minor traffic offenses and who do not pose a traffic safety hazard.

Everybody should work to pay back what they owe, but it is in everybody's interest to keep people safely on the road with a valid license and registration and insurance as they work to put their lives back on track. In addition, our Department of Corrections now can hire ex-offenders into a job training program so that they can have paid job experience while they seek permanent employment after they are released.

And in a time of incredibly and historically tight budgets, we have invested in a culinary arts program and an automotive service program, two areas where we know that jobs are available for trained individuals, and the industry is welcoming to ex-offenders.

And we have also banned the box on State job applications so that more than 2,000 ex-offenders who apply for State jobs have a better shot at employment. State hiring can still involve background checks, but it is important that these individuals no longer have to check a box on job applications because that practice too often denies them a fair chance to interview at the beginning of the process.

Now, embracing the future of our criminal justice system also means recognizing that many offenders suffer from addiction. Seventy-one percent of the men arrested in 10 U.S. cities in 2011 tested positive for an illegal substance. No one should be behind bars because of a lack of services in their community.

We are expanding services for those struggling with substance abuse disorders and no longer relying on a one-size-fits-all treatment model. Instead, we are better addressing individual needs in our State by expanding sober-living residential beds and increasing services geared to young people while also focusing on education and prevention.

And one innovative Delaware program is called New Expectations, which serves pregnant women who need substance abuse dis-

order treatment. And we realize that too many pregnant and addicted women were in correctional custody because of a lack of community services. So, literally, judges were being assigned, being sentenced to prison, pregnant women were being sentenced to prison by judges because the judges believed that was the safest place for them to deliver their babies.

While working with our corrections' health provider, we created a community-based group home where pregnant and new mothers can receive treatment, can gain parenting skills, and, most important, form strong bonds with their babies. And for these mothers and babies, the opportunity to remain together in a supportive and sober environment may make all the difference.

I want to make one last point before I close. Whatever structural changes we put in place, we believe we must also change the hearts and minds of the public about who offenders are and what they can offer the community. And to that end, we have undertaken what we believe are some creative efforts to bring the community closer to the prison system by literally bringing them inside.

So the Mid-Atlantic Wine and Food Festival hosted a dinner that was prepared by women in our culinary arts program working alongside leading local chefs and was served inside the prison facility. And it was a remarkable experience to see those inmates working alongside and learning from the skilled chefs who came inside and sitting at the same table with the guests.

At the end of this month, TedxWilmington, which is our local TED talk, will be held inside the women's prison. And during the day, six women will present their stories alongside other speakers from around the community. And they are being coached by a local business leader who has already given a TED talk. And for the last 3 years, women attorneys and judges have hosted a day-long event inside the women's prison for more than 100 offenders with activities, classes, lunches, and a keynote speaker.

And our culinary arts and automotive training program that I mentioned a few moments ago in the men's facilities also engage in outreach to employers while the men are still incarcerated. And we changed the law so that ex-offenders could be employed in the prison programs they graduated from while they seek permanent employment in the community.

Now, we should be under no illusion about the difficulty of these tasks. The individuals who will be directly impacted by the policy changes I have talked about have made very poor choices, and their situations are usually not at the forefront of the public's consciousness. These issues will fade into the background, unless we realize the difference that we can make in the lives of offenders and the benefits that we can achieve for society as a whole.

But we can't afford and we can't tolerate the status quo any longer. And I am hopeful that, with an increased bipartisan and national commitment to addressing the inequities and inefficiencies and unproductive policies of our criminal justice system, we can look forward to a lot of progress ahead.

And I really do thank you for the focus that you are putting on these issues and for the opportunity to join you today.

[Prepared statement of Governor Markell follows:]

[For complete submitted testimony, please see the following website: <https://oversight.house.gov/hearing/criminal-justice-reform-part-i/>]

Chairman CHAFFETZ. Thank you, Governor. Do appreciate it.

We will now recognize the gentlewoman from Wyoming, Mrs. Lummis, for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman. And thank you for hosting this hearing. It was really enlightening to hear from the first panel because there is so much underutilized talent in the Congress of the United States, in both the House and the Senate. And so I was so pleased that you had Members of the House and the Senate who have been working on these issues at length here to testify.

I also want to thank the Governors for attending. Our States are the great incubators of innovation, and the best ideas percolate down to Washington from the States that really are at the top of the pyramid in terms of the way the Founding Fathers envisioned our country operating. So you are at the forefront of innovation in public policy.

Thank you for being here, with a special hello to Governor Markell, with whom I served as State treasurer. So there is a bit of a reunion this morning.

Governors, I would like you to comment on the proliferation of Federal crimes that used to be State-based crimes and how they have provided difficult interactions between Federal authorities and State authorities. I would also like you to both comment on mandatory minimum sentencing laws at the Federal level.

And, again, thank you both for being here and for the work you are doing in this area.

Governor BENTLEY. Well, let me say, the mandatory Federal sentencing does make it difficult, obviously, when some crimes seem to be not what you think they are. I mean, they are at a level that you think there is no discretion. So there is very little discretion. We do not deal a lot—personally on the State level—we do not deal a lot with the Federal crimes situation other than we deal a lot with drug situations.

And we just recently, in Alabama, had a problem with our prescription drug abuse, and we worked very closely with the Federal Government in really shutting down doctors who are drug dealers. And so we have had instances there.

We also run into problems. You know, the Federal Government comes in, and we recognize that when we did that and shut down the doctors, we had 6,000 patients who did not have doctors and who needed drugs. And, you know, sometimes the enforcement does not look at the people, and they do not look at the patients. And me being a physician, we recognize this and so we took care of the situation.

But, you know, we do cooperate with the Federal Government. Sometimes the Federal Government does not want our cooperation, and we just have to sometimes do things without the Federal Government. But this was kind of the case in this situation where we were trying to close down some of the drug mills.

You know, some of the Federal authorities did not want the State involved in it, but we are the ones on the ground. We are the ones

that deal with it the most. But, you know, the mandatory sentencing is a real problem on the Federal level, but, you know, since I can't comment on that as much as certainly we can what we do on the State level.

Governor MARKELL. If I could make just a couple points. First, I have not heard a lot from our prosecutors about the conflict that you alluded to in the first part of your question. We can check with our Department of Justice, and I will get back to you on that.

I will say, we are extraordinarily appreciative of the resources available from the Federal Government working in partnership with our law enforcement agencies, you know, generally. They have been really, really helpful, and I am grateful to our congressional delegations, Senator Carper, and Senator Coons, and Congressman Carney, for that help.

On the minimum mandatory piece, one of the reasons that I was so encouraged that you are having this hearing today and inviting Governors in because I think this is an area where we can learn from each other. And back in 2011, we revised Delaware's drug sentencing laws to relax minimum mandatories to reduce penalties for small amounts of drugs and enhance penalties for violent offenders.

This is the kind of issue where the people that we all serve do not really care if something is a State issue or a Federal issue. They just want safe communities, and they want to make sure we are all working together to make sure that more folks in our States can live up to their potential. So I am hopeful this is something that we can work on together.

Mrs. LUMMIS. Thank you both for being here.

I had also been general counsel to our Governor at one point, so I was very well aware of the important innovations that are occurring at the State level.

Gentlemen, you are at the tip of the spear, and thank you kindly for being here.

Thank you, Mr. Chairman, for holding this hearing. I yield back. Chairman CHAFFETZ. Thank the gentlewoman.

I now recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. I want to thank both of you for being here. Most important of all, I thank you for your leadership.

As I was sitting here, I could not help but think about my oldest brother, who is a public defender. And he was telling me on Sunday that he has now seen three generations of criminals in the same family. And, you know, I was just thinking about the things that you were saying, and I want you to understand that the things you are doing is not going to save everybody, but it is going to make a difference in somebody's life for generations—for generations. When we are dead and gone, some family is going to be better off because of what you are doing.

Governor Bentley, you mentioned two legislators. You said they were here, but I do not know who they are. Having been a former State legislator, I would like to give some recognition. I would like to at least know who they are. Can they raise their hands?

Governor BENTLEY. Representative Mike Jones is with me. Senator Cam Ward could not be.

But Representative Jones, raise your hand there.

Mr. CUMMINGS. All right. Thank you.

Governor BENTLEY. He has done a fantastic job. He ushered through the house our initiative that we have passed and we are going to fund. We are working on that right now. We have a special session to fund it. But, you know, they have done a fantastic job.

Mr. CUMMINGS. I have noticed over my 33 years of being in the State legislature and now in the Congress that so often it is the voice of leadership that makes a difference. In other words, the person you do not expect, like you, Governor Bentley, perhaps to take the kind of actions that you have taken. I mean, people have to say, wait a minute, Governor of what? What State? But you are doing it.

And you, Governor Markell, I mean, so I want to go to this whole idea of ban the box. I think you have that in your State—

Governor MARKELL. Yeah.

Mr. CUMMINGS. —Governor Markell. A lot of people do not realize that trap. It is a—when you get a record, it is like—it is a life sentence. And I think unless people meet people who are in that position—and by the way, it is not just black folk. It is a whole lot of folk. They cannot do anything, can not get a job, can not get—I think you mentioned, Pell grants, all kind—so what impact—I know you said something about 6 months in a program where they could possibly work for the State for 6 months, can you explain that.

Governor MARKELL. So on the ban the box—

Mr. CUMMINGS. Both of them. Yeah, ban the box and that.

Governor MARKELL. So on the ban the box specifically, for those of you who are not familiar, many States, including Delaware, until we change this law, if you applied for a State job, there was literally a box on the application that you had to check if you had a record. Well, put yourself in the shoes of the hiring manager, and you have got a lot of applications coming in for a job, and a bunch of them have that box that somebody has got a record, and a bunch of them do not. I mean, I think it is pretty highly likely that if you are that hiring manager and you want to be through with the process as quickly and efficiently as possible, you put the stack with the check marks over here, and you just focus on the other applications.

And so it is not as though when we changed the law and banned the box, it is not as though the hiring manager can not find out if somebody's had a record, but they will find out later in the process. And so we want people at least to get into the process, to have the chance for an interview. And we think that was an important step to take. And I am very grateful to feel Representative J.J. Johnson in Delaware for making that happen.

If I could make one other point, Mr. Cummings, and it is really responsive to the point you are making about—was it your brother that is a public defender?

Mr. CUMMINGS. Yes, sir.

Governor MARKELL. And you say he has seen three generations.

Mr. CUMMINGS. Three generations. He has got people's grandfather serving a sentence with grandson and son.

Governor MARKELL. So the point that I want to make, I mean, I think all of the reforms that we are talking about today are extremely important. But that being said, if we are talking about avoiding the fourth generation, there is a whole lot of other stuff that is more important, or it is just as important. And it starts at the beginning, you know, whether it is, you know, the Nurse-Family Partnership program, you know—highly effective, nurses visit expectant mothers until the baby is a couple years old—early childhood education, after-school activities for kids. And so I think we have to do the things we are talking about here. But if we are not focused a whole lot earlier, we might be doing a good job at the later end, but what we really ought to be trying to do is avoid a whole lot of people entering the system as opposed to just saying we are going to do a better job with those people who are already in the system. We need to pay equal attention to get the people to not enter the system in the first place.

Mr. CUMMINGS. On that note, after the Freddie Gray incident in my district, in my neighborhood, we spent a lot of time talking to students in high school. And you know what I discovered, Governors? And I knew it, but I heard it upfront. There were so many children that said things like this: We feel that we have not gotten the education that we need to be all that God meant for us to be.

And there was an anger that they wanted to be this doctor or they wanted this, and then they get to the 10th grade and discover that their reading skills are not what they are supposed to be, or they do not have the kind of courses to go to college, you know. And so it is that whole preventive thing that we need to be doing.

And by the way, that, for some communities, is the norm. But in other communities, it is not the norm. And so some kind of way, we have got to figure out ways to deal with that education, the health issues—you are absolutely right. Freddie Gray had a serious lead problem. I mean, really bad. And so that, of course—and then, of course, there were others who have asthma problems. Why? Because of the environment. So we have got a lot of things to work on.

And how do you determine, Governors—I mean, you are looking at the front end, Governor Markell and Governor Bentley, then you look at the back end, so how do you determine where you start or what you do? I mean, how do you make those determinations as leaders?

Governor Bentley.

Governor BENTLEY. Well, I think that what you are talking about, what Governor Markell is talking about, you know, we have to look on the front end, and we have to look on the back end. On the front end, what we have done in Alabama with this prison reform bill that we have passed, we have changed minor offenses, especially property offenses, and also drug offenses to a class D felony. And these will be put in community settings rather than being put in prison.

Then, on the back end, what we are doing is we are helping the Pardons and Parole Board not to retry every case that comes up, and that is what tends to happen sometimes. And 40 percent of the—I say patients. Here I am talking like a doctor—but 40 percent of the people that we have in prison right now are in prison

because of problems they had with their parole, you know. They could not get there. They did not have a driver's license. I mean, there were just multiple problems. And so 40 percent of our prisoners are related to their parole.

And so what we want to do is find community settings and the types that work and put them into effect and make sure that jobs are available, make sure that workforce training is available, and make sure that when they do go before the Pardons and Parole Board, that they are not retried. It has different structures and different ways of looking at it. And they need to have guidelines. And so we are working on that. And so it is on both sides. It is on the front end, and it is on the back end.

One of the things that we have done in Alabama—and I think most people would appreciate—what I have done is I have put a special emphasis on pre-K education. Alabama has the best pre-K education rating in the United States. We are rated number one in the United States as far as our pre-K program. And each year I put an extra \$10 million into the budget, the legislature has put that and helped me do that.

And by the time I finish my term this time, 3-1/2 years from now, with the help also of Arne Duncan and with the Federal Government—they have given us grants—every child in the State of Alabama will have the opportunity to attend a first class pre-K program. This will change their lives because that will set a foundation for them that they can learn later in life.

The problem is you can not teach them in the sixth or eighth grade when they have not learned in pre-K levels and the first grade. So we put a special emphasis on that. Ten years from now, it is going to make a difference; 15 years from now, it is going to make a difference.

Governor MARKELL. Our job, you know, is very similar to yours in that our responsibility is to make sure we get the best possible return on investment of our taxpayer dollars. And so there are those who certainly would like to see us build more prisons. But at \$36,000 per prisoner per year, the question is, is that really where you get the best return?

And so I am totally, you know, in agreement with the point that Governor Bentley was just making. We have doubled, for example, over the last 3 years, the number of low-income kids in Delaware who are enrolled in the highest quality early childhood centers. And this will change their lives.

And so whether it is that or whether it is the additional work in K-12, continued improvement there, whether it is the opportunity for after-school and summer programming for these kids to focus on job skills, these are the choices that we all have to make. I mean, we are allocating resources amongst competing demands. And so I think what we need to try to do every single day is figure out where do we get the best return. And it is certainly my view for a whole lot less money we can get a better return on those investments than we can on building additional prisons.

Mr. CUMMINGS. Thank you very much.

Chairman CHAFFETZ. Thank you.

Now recognize the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes.

Mr. MULVANEY. I thank the chairman.

I thank the gentlemen.

To a certain extent, you guys are preaching to the choir, which is not necessarily a bad thing because it helps us sort of build interest and build momentum on particular legislation. We did this in South Carolina back in 2010 when I was in the State senate, and the results have been very similarly positive to what you gentlemen have talked about here today.

I just pulled the most recent report. Our daily prison population is down almost 10 percent from where it was before we passed the reform legislation, down almost 25 percent from where we expected it to be, Mr. Chairman, if we did not pass the reforms. Our non-violent population is down by 30 percent, which has allowed us to open space for more violent offenders. Our violent population is up by 6 percent. As a result of taking those people off the streets, violent crime in the State is down by 16. We have closed two facilities where we have saved almost \$20 million a year now in South Carolina.

In fact, Mr. Chairman, if there is no objection, I would like to enter the South Carolina Sentencing Reform Oversight Committee's most recent status report, June 2015, into the record as an example of what can go right.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. MULVANEY. Governor Bentley, we actually focused on something you mentioned, which was how to handle parole and probation violations. We handle that now mostly administratively, not by sending people back into prison, and that has been very helpful to us.

As we look at what has worked in other States, Governor Bentley, I know how we did it in South Carolina. How did you all do it in Alabama when you put your commission together, your JRI, your group? How did you do that in order to get buy-in from all sorts of different folks?

Governor BENTLEY. Well, what I did is, of course, we got the judicial branch, the legislative branch, and the executive branch, we all came together. There are very few times that——

Mr. MULVANEY. Yeah, we do not ever do that in South Carolina, so——

Governor BENTLEY. Well, that may be the case. But let me say this: It was bipartisan, Republicans and Democrats, and all three branches of government came together to form this commission. And we have worked together. And we have had great leadership from the legislative level, like Representative Jones, who is with us today. And so we have worked together. And now, I have appointed an oversight commission to implement the law that we put in place.

Mr. MULVANEY. As a result, was there political blowback when you did it?

Governor BENTLEY. No, there really was not.

Mr. MULVANEY. Mr. Chairman, it was the same in South Carolina. I have never seen anything like that. We took this on. We thought it was going to be a very controversial issue, and it turned out to be something that had broad-based bipartisan support and that was supported back home, from law and order folks to civil



libertarians. A lot of folks took a look at it and said: You know, this is generally a good thing.

Governor Markell, you mentioned something—I apologize if we discussed voting rights earlier. It is something I hope we do get a chance to talk about. That is a big part of the difficulties that we face in our sentencing laws right now. But you mentioned something that is sort of related, which is this ban the box. I am not familiar with that. We did not handle that, I do not think, in South Carolina.

Curious, how do you all handle differentiating then between violent and nonviolent, serious and nonserious. You say you took the box away, which I understand. But it was there for a reason, which is you wanted to sort of know if someone you were thinking about hiring had a particular type of background. So how do you handle it now? You said they find out later in the process. Have they found it to be an impediment to hiring good people?

Governor MARKELL. Right, before the hiring decision is made, the hiring manager gets access to all that information. But the point is, it does not disqualify somebody on day one from having the chance to interview and to be considered.

Mr. MULVANEY. Have you had any bad experiences yet with hiring people that you should not have?

Governor MARKELL. No, because, again, the hiring manager does get full access to the information. It is just, I mean, it is really a matter of letting more people have an opportunity to get into the situation, and if they are, for example, a nonviolent offender who has paid their debt to society, can do the job, has the right skills, has the right attitude, instead of being disqualified from day one from even being considered, they are now part of the mix.

Mr. MULVANEY. And open-ended question to either one of you: What are you gentlemen doing in your State regarding voting rights, about reestablishing the right to vote for nonviolent felons after they have paid their debt to society? Either one of you or both.

Governor BENTLEY. Well, first, let me say, this is not part of our package right now.

Mr. MULVANEY. It was not a part of ours either so that is why I am asking.

Governor BENTLEY. But I will say this: You know, this is called for a reason a Department of Corrections. If it is a Department of Corrections, then you know if someone has been corrected, they should be able to live free in society. That is my personal opinion. So it is something that we are going to work on and something that I think that we really need to look at in Alabama.

Governor MARKELL. We did a few years ago.

Mr. MULVANEY. You did it?

Governor MARKELL. Yeah, a few years ago.

Mr. MULVANEY. How has it worked out?

Governor MARKELL. I think it is fine. I have not heard any problems with it.

Mr. MULVANEY. Chairman, with the risk of going over for 15 seconds, we have fought in various States, including my own, over voter ID, which I think in an extreme case might deprive 10 to 15 people of the ability to vote in my State on an annual basis. I com-

pare that to our voting rights laws, which deny a large chunk of the folks I represent from the right to participate in the ballot box after they have rehabilitated and paid their debts to society. So I hope, as we go forward, we get a chance to look at that issue as well.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank the gentleman.

We will now recognize the gentlewoman from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you so much, chairman.

I want to really thank you for calling this important hearing.

And I welcome two outstanding Governors. We appreciate so much your leadership.

I want to really underscore Representative Ranking Member Cummings' leadership on this. I was privileged to join him at a public hearing in his district after the Freddie Gray incident on ways to respond, one of which was, of course, sentencing reform. He has been a national leader on it.

And, Governor Bentley, I had the privilege of joining our President in your great State for the 50th anniversary of Selma. I want to congratulate you on the warm reception and everything you have done to highlight that important chapter in our history. It was a very meaningful—the Members meeting, along with John Lewis and Terry Sewell, in your great State, and I wanted to thank you.

And particularly to thank both of you for your wonderful leadership in sentencing reform and particularly as it applies to non-violent offenders. And I think it is important that we in the Federal Government follow suit on what you are doing in your States with this reform. I know that my State of New York is also working in this area.

I would like to also focus on overcrowding of prisons, which in many cases has unsafe conditions for the employees and really for the inmates themselves. And I would like permission, if I could, unanimous consent to place in the record a letter to this committee from 60 different organizations across our Nation, including the ACLU, The Sentencing Project, the NAACP, the Prison Policy Initiative, the Leadership Conference on Civil and Human Rights, and many, many others, all of whom agree on a set of principles for reform to reduce excessive incarceration and racial disparities in the Federal Prison System.

Chairman CHAFFETZ. Without objection, so ordered.

Mrs. MALONEY. Thank you so much.

These principles include: Restoring proportionality to drug sentencing; secondly, promoting and adequately funding recidivism reduction and reentry programming; and, thirdly, making sentencing reductions retroactive; and expanding compassionate release; and expanding time credits for good behavior. And I appreciate so much allowing me to put this in the record.

Both of your States, Governors, are operating at over capacity, as I understand it. And you have both implemented some reforms.

Governor Bentley, it has been reported that Alabama is approximately at 190 percent of capacity, and your State has a plan to reduce its current prison population over the next several years. And

how will the criminal justice reform package you signed into law this year help you to control this overcrowding and help reduce the prison population?

Governor BENTLEY. Well, it is going to help on both sides. It is going to help on the front end because we have created a class D felony for minor crimes and for drug crimes, and there are some other crimes that we have reclassified also.

But, also, on the back end, what we are trying to do is we are trying to—we will use community corrections, you know, for the minor crimes. And then, on the back end, we want to work with our pardons and paroles; we want to have more people to monitor our parolees. Right now, it is 200 to 1, and we obviously need to decrease that. This is going to take money, and we are going to put \$26 million more into the budget this year, \$151 million total over the next 5 years.

And so it is going to take money to do this. But, you know, it is so important because it has to do with people's lives, but also it is going to save money. So even if people do not look at other people's lives, it is going to save money for the State of Alabama because it costs so much to incarcerate these individuals. And we have to try to get these people out functioning normally, and I believe that we can do that with a large number of the population.

Mrs. MALONEY. You have also—I want to know—thank you. Even though with the \$26 million, do you have adequate funding for it? But also you appointed in Alabama a criminal justice oversight and implementation council to oversee these reforms. And what role do you see the council having in overseeing and implementing these sentencing reforms?

Governor BENTLEY. I did. I just appointed that oversight committee. The oversight committee is to make sure that the prison reform bill that we have passed and that I have signed into law—our legislature passed it—to make sure that it is implemented, that these things that we have put in the law will take place.

We have to make sure, obviously, that we have adequate funding, and we are working on that right now. We certainly believe that we will. It is a bipartisan effort. Everyone understands the importance. It is at 195 percent overcrowding. This is intolerable. We cannot continue this. I inherited this, you know. This was not obviously of my doing, but we also see it is a problem that needs to be solved, and we are going to do it.

Mrs. MALONEY. And, Governor Markell, congratulations on the bill you signed into law that gives judges greater discretion to allow nonviolent offenders to serve their sentences concurrently. And how do you balance the need for public safety with the need to ease overcrowding and humanitarian concerns?

Governor MARKELL. Well, you have to be smarter about it. And there is no question that some people need to be locked up, and you need to keep them there. I think on the issue of overcrowding, well, too many people are committing the crime, so you have got to get to some of the root cause issues. Recidivism is too high. Some of the sentencing needs to change. And so, I mean, it really is, there are a number of factors contributing.

The one sort of specific area that I think is worth mentioning is that, in our case, we have a very significant number of our inmates

who are there as pretrial detainees. And in a case—the women’s prison in particular, really high percentage of those inmates are there as pretrial detainees. And so we are actually borrowing a program that, I think, started in your State, to do a better job of not sending all those pretrial detainees to prison, but making sure that they have got folks in the community who are ensuring that they are going to their probation or, you know, their appointments, getting the services they need and the like.

So we are really trying to keep some of those folks out of prison in the first place, at least until trial because we know, it is just not—we know that if we keep them out, it is going to be better for them long term.

Chairman CHAFFETZ. Thank the gentlewoman.

Now recognize the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Well, Thank you, Mr. Chairman. And thank you for your great leadership on this issue.

And I appreciate the Governors taking time out from their busy schedules to be here. I am especially interested in this because I spent 7–1/2 years as a criminal court judge before coming to Congress many years ago trying the felony criminal cases.

In my last newsletter, I quoted Paul Larkin, senior legal research fellow at the Ed Meese Center for Legal and Judicial Studies. He wrote, he said: Today, there are perhaps 4,500 Federal offenses and more than 300,000 relevant regulations on the books. No one knows exactly how many. The Justice Department and the American Bar Association each tried to identify every Federal crime and failed. No reasonable person, not even a judge or lawyer, could possibly know all these legal prohibitions, although criminal penalties are attached to each.

He said: We need a mistake-of-law defense.

And I agree. There is now so many laws and rules and regulations on the books that they have not even designed the computer that can keep up with all of them, much less a human being. They are all being frequently changed. Almost everyone has violated some Federal or State law at some point. An innocent mistake is not supposed to be criminal, but a zealous prosecutor can make even the most innocent mistake look criminal.

George Will, wrote in a column a few months ago, he said: Overcriminalization has become a national plague.

And I can tell you that I have always been a very conservative Republican, but I am very supportive of the work that you Governors have been doing and that Chairman Chaffetz and the other Members that we had here this morning are doing because this is a very fast-growing problem.

But I remember reading, I think, in late, in December of 1993 or 1994, Forbes Magazine, a very conservative magazine, had a cover article that said we had quadrupled the Justice Department from 1980 until the mid-1990s and that prosecutors were falling all over themselves trying to prosecute people, and people were being prosecuted for violating laws that they did not even know were in existence.

It has gotten out of hand. And we have greatly expanded the Justice Department and these crimes since the mid-1990s even more. So I really appreciate the work that you are doing.

Now, I remember Ray Donovan, who was a member of President Reagan's Cabinet being tried on some very questionable charges, and he was found, of course, not guilty, and then came out and said: Where do I go to get back my reputation?

So these prosecutions can be very harmful.

I went through over 10,000 cases in the time that I was judge because in criminal court, probably 98 percent of the defendants plead guilty and then apply for probation. And so every day, for 7-1/2 years, I would read 8- or 10-page reports that went into the defendant's backgrounds. And every single day I would read, defendant's father left home when defendant was 2 and never returned; defendant's father left home to get a pack of cigarettes and never came back.

And we found that over 90 percent of the defendants in felony cases came from father-absent households. And I am wondering in the work that you two have done, have you found that to be similar in your States, or have you looked into that? Because it seems to me, drugs and alcohol are involved in many of these cases, but the root of most serious crime in this country seems to be father-absent households. Have you all found that to be true also or—

Governor MARKELL. I do not know the statistics. But what you are saying is very—it certainly resonates.

Governor BENTLEY. I think that obviously the family is the first teacher, and people learn how to live by being around people. And they are around parents or lack of parents. There is no doubt that parents play a major role in a child's life. There is no doubt a father plays a major role in a child's life, more so than we give credit for maybe nowadays.

And this is true. Education plays a role. You know, there are some things that we can change. You know, as Governors, as legislators, as governments, there are some things that we wish we could change. We wish we could change the family structure. Unfortunately, we can not pass laws to do that. So what we have to do is to make government more family friendly as best that we possibly can, help educate the family, help educate the children, do what we are doing in Alabama, have a quality pre-K program so that children will have a good, strong foundation, and support families as much as we possibly can. I just do not think we can pass laws to do that. I wish we could, but we can not.

Mr. DUNCAN. One thing I did, I started a court counselor program, I called it, similar to the Big Brothers Big Sisters program, and I got church people and various volunteers to come down because I said the probation counselors and the parole counselors were overloaded and that most of these young people had very seldom even sat down with a family at dinner and had agreed to volunteer to meet once a week with these defendants while they were on probation.

Governor BENTLEY. One of the things that I am going to do, in fact, I am going to create a task force in the very near future on this with faith-based organizations in the State because there are a lot of faith-based organizations in the State, but there is no orga-

nizational structure to them. And so what I am going to do is create a task force and bring them all together and let them work in the prisons because I think faith-based organizations are vital.

I do not believe, unless you change attitudes and change the heart, I do not think people are ever going to change. And so I think they play a vital role in this. But there is no structure and no organizational structure. So we are going to bring all organizations together, and we are going to let them work in the prison system.

Governor MARKELL. You know, we have seen, at a very personal way, in addition to Statewide, the power of introducing adults into the lives of many of these kids, who are being raised without dads. You know, my wife and I have been mentoring a couple of young men now for probably 14 or 15 years, neither of whom ever had a father in their life.

And my wife especially, and you can just—mentors can change a kid's life. And it would be better for everybody if that was not the answer, but I do think that, you know, anything that we can do, all that we can do to encourage more people to get involved in the lives of these young people, the better off they are going to be.

Governor BENTLEY. Boys & Girls Clubs, all those things that you are talking about. The Boys & Girls Clubs and all these types of organizations do a fantastic job, and we need to take advantage of those.

Mr. RUSSELL. [Presiding.] And the gentleman's time has expired.

I would ask all the members, we have agreed to a hard time of respect to the Governors at noon. So in the interest of accommodating all of the questions, I would ask that you would please stick to the allotted time.

And the chair will now recognize the gentlelady from New Jersey, Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

And I thank you both very much, Governors, both for being here today and sharing the good news of what you are doing and the reforms that are taking place and giving me hope that even New Jersey is going to catch up.

I spent a lot of time on these issues when I was a legislator in New Jersey. And we looked at things, alternatives to incarceration, what happens when you are incarcerated, what happens when you are coming to the end of your term, your sentence, and how to get you reintegrated back into society, all of which, you know, you all have addressed. And I think that we are all moving in the right direction.

One of the concerns I have is that we have a tendency to work in silos. And I think that things that we did not do as well in New Jersey that we should have done, we decided that we could not pay to educate our inmates even though the literacy rate was so doggone low, so they came in barely able to read, and they left in the same way. We disinvested in skills training, and so when they came in, they came in with no skills, and they left with no skills.

And so that was all ripening for recidivism, which is a very high rate in the State of New Jersey. So I am very interested in looking at what do we do with those who are incarcerated, in the sense of giving them educational opportunities as far as their intellect will

take them as long as they are incarcerated, giving them job skills that will help them—marketable job skills that will help them as they come out and then working with the system with ban the box that I sponsored in New Jersey and other initiatives that helped them to integrate into the workforce.

But I, honest to God, believe that we need to be investing a lot in the beginning of this experience and that is in the mother's stomach. And from the time that mother has that baby, we need to be figuring out a way to incentivize her coming out, getting job skills, even paying for being trained or apprenticed, incentivizing putting that child into early child care, babysitting, whatever, not just preschool.

But the only way that I think that we will eliminate that cycle, that three-generation cycle that my ranking member referred to that I have seen in the State of New Jersey, is if we deal with it holistically, the Departments of Education, Human Services, Health, as well as corrections, works together and looks at, what does it take to have a healthy human being? Start from the baby all the way up to the adulthood.

And until we are really willing to pull task forces together and to put resources into that, recognizing it is not cheap—it is not going to be cheap to pay people to be trained in jobs. It is not going to be cheap to incentivize that mother to get into that training program and for that child or that baby or babies to be in early childhood. But to me, that is what we need to do in order to really start creating healing and healthy communities.

And the other thing that I am very concerned about is as many alternatives as possible to juvenile incarceration and recognizing that that juvenile mind does not really become mature until it is 21-years-old. So that whole issue of raising our juveniles up, I am happy to see that you all recognize the significant negative impact that has.

And so, with that, I am going to exit because I just know that there is much more work to be done. And I am glad to see that I have a Southern State and I have an Eastern co-State who recognize that also, and that—I just am willing to work with any Member from either side on issues that will get us to where I think we could be.

Thank you very much.

Thank you, Mr. Chairman.

Mr. RUSSELL. Gentlelady yields back.

And the chair will now recognize himself for 5 minutes.

Senator Booker in earlier testimony had talked about plea bargains and how this constitutes the vast majority of sentencing. How have you factored this in in dealing with the issues that we have discussed today in your own States?

Governor MARKELL. It is an interesting question. I mean, I think it is true. And I do not know that we have, you know, done any specific thinking around the plea bargain issue and how it affects the rest of what we are doing. But, I mean, I think, I really agree very much with the comments that were just made. I mean, this starts at the beginning. And so if you want to have fewer people in a plea bargain situation, I mean, it really, it starts incredibly

early, and you have got to work throughout the child's life into young adulthood.

And, obviously, the hope is we have got many, many fewer people who were in that position in the first place. And so if somebody plea bargains out, the question is, what kind of opportunities are available to that person to actually, you know, get a job, hold a job, live a decent life. And so I think, you know, it is really the same set of issues around early childhood, around education, around having things to do in your community, around having mentors. And then, you know, once you have gotten involved in the criminal justice system, whether you are going to be able to get a job.

And, you know, I think you were here at the beginning when I talked about one of the issues in Delaware. Until last year, even if your crime had nothing to do with driving a car, there was a pretty good likelihood you would not be able to get a driver's license. We have got to think, I mean, part of our responsibility is, how do we set people up for success?

And if we know that one of the most important factors, one of the most important predictors of whether or not somebody is going to get on a better track is whether they can hold down a job, and we have got a system in place that says, "Well, you might be able to get a job, but you are just not going to be able to get to it," does that make any sense?

And I just think, you know, so much of this is stepping back and saying if we try for a moment to put ourselves in the shoes of the people who are trying to, you know, advance, what is it that is going to stand in their way, and what is the role that we can play in terms of taking away—

Mr. RUSSELL. The reason I brought up the question was, you know, you were addressing the check-block issue and talking about the difficulty of them having to be able to get a job. But on the front end of that, someone is accused and could lose their job. Now, they can not provide an adequate defense, and they are faced with a plea or rolling the dice with a jury that, you know, by all statistics, 97 percent, I think, Senator Booker had said, they never get to that. And so it seems to me that this is also a part of the equation, and that is why I specifically asked the question.

Governor MARKELL. Thank you.

Mr. RUSSELL. And now, Governor Bentley, did you have any comments on that?

Governor BENTLEY. I would think plea bargain would have to do with the overcrowding of the court system and whether or not someone had the finances, what you were talking about, to hire a lawyer. So sometimes they just have to take what they can get. However, once the plea takes place, they enter the system, and so then we have to deal with them in the system. And that is what we are dealing with mostly right here in our new legislation is those who have entered the system.

Now, we do have a problem in Alabama: Just like any State, we do not have enough money; we do not have enough courts; we do not have enough lawyers; we do not have enough defense attorneys. So, you know, we do not have that because—and that still boils down to money, and we are working on that situation right now. But I would think that a lot of that has to do with the lack



of finances and the lack of our court system being adequately funded.

Mr. RUSSELL. Thank you.

And I will yield back now.

Mr. CONNOLLY. Would my friend yield?

Mr. RUSSELL. I am sorry?

Mr. CONNOLLY. Would you yield for a second?

Mr. RUSSELL. Out of interest to get the other members, I am going to go ahead and expire my time—

Mr. CONNOLLY. I was just going to agree with you.

Mr. RUSSELL. —just so we can get everybody with the remaining time that we have to hit the hard time at 12:00.

The chair will now recognize the gentlelady, Ms. Plaskett.

Ms. PLASKETT. Good morning, everyone.

And thank you to the chair and Mr. Cummings, Ranking Member, for your leadership in bringing this issue of criminal justice reform, not only here in Congress but as well throughout the country.

I have a background which is very much in line with our hearing today. I am the granddaughter of a deputy police commissioner. My father was a New York City Police officer for 30 years. My first job out of law school I was a prosecutor in the Bronx doing narcotics prosecution. And I have seen how the role of criminalization and overcriminalization takes place in communities.

As a person of color, I have also seen the other end of it. I have defended relatives in criminal matters. I have had to recuse myself as a prosecutor when I look across the aisle and see that it is a relative for the case that I am holding up. And so I understand that this is an area that impacts us tremendously.

I had the distinct honor of working for Jim Comey and Larry Thompson in the Deputy Attorney General's Office at the Justice Department. And I think Director Comey is doing what he can as well at the level that he is at to work on this.

Ms. PLASKETT. The thing that I wanted to talk about was what I think is the root of what happens here. As a prosecutor, my mandate was to prosecute crimes. And I see too often that people are very interested in prosecuting people as opposed to the crime.

And I think that there is a devaluation that has occurred in human life that has caused us to create the system that we have in our prisons and the feeling that happens and the school-to-prison pipeline that has occurred.

Governor Bentley, you talked about the pre-K system, and it is fantastic to hear what you have done in terms of bringing our youngest children into education. Because, to me, you are correct; that is the key.

But I wanted to see if you could talk a little bit about what occurs in the junior high and high school levels in the amount of juveniles that we have, that our law enforcement becomes too quickly involved in our school systems, and there is not a deescalation that our teachers are aware of, and the students do not have the necessary skill sets to be able to not go into the criminal system.

We talked about the statistic that Alabama has in 190 percent, as well as, Governor Markell in Delaware, the work that you are doing.

What percentage of the individuals that are in your prisons are, one, there as juveniles for adult crimes? And, also, I know that 40 percent in Alabama are parole and probation violations. But how many are—Governor Markell talked about it—how many are presentencing, individuals who are awaiting trial, individuals who have been possibly convicted and waiting for sentencing?

If either of you could talk about those.

Governor MARKELL. So, in terms of the percentage who were juveniles serving adult crimes, I am not sure.

I will tell you that, in terms of pretrial, up to 40 percent of the women, I think closer to 20 percent of the men.

And, to your point about the youth, it is one of the things that we need to do a much better job of. When we see our kids who come into our juvenile facilities, they make extraordinary progress while they are there. I mean, I meet these kids at the beginning, and I see them 6 months later when they are getting out, and their academic and emotional progress is noticeable. But then what happens to too many of them is they get out of the juvenile facility, they are out of the structured environment, and they go back to the community they came from. They very often do not go back to their traditional school. A lot of them fall through the cracks.

And this is something that we just have to make a whole lot more progress on. It is something that we are working on, but it really needs to—it includes the traditional schools. It includes, you know, this system. But it is just—it is amazing to see how much progress they can make and so tragic to see, after making that progress in a structured environment, how many of them are not able to keep up that trajectory.

Mr. RUSSELL. And the gentlelady's time has expired.

And the chair will now recognize the gentleman from Alabama, Mr. Palmer.

Ms. PLASKETT. Mr. Chair, would you allow Governor Bentley to respond to my question?

Mr. RUSSELL. Yes.

Governor BENTLEY. I will get back with her with the answer.

Mr. RUSSELL. Well, we can allow that, but, unfortunately, then what will happen is Mr. Palmer will be the last and then we will stick to our time.

So, Governor Bentley, please.

Ms. PLASKETT. Thank you.

Governor BENTLEY. Let me say, I do not know either how many are in prison now who were juveniles when they committed the crime. We can get those statistics for you, and we can get back with you on that issue.

Mr. RUSSELL. And the chair now recognizes the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

And thank you, Governor Bentley and Governor Markell, for being here today.

We have had a lot of discussion about what we need to do to help reduce the likelihood of people entering prison, but I think the issue that we are faced with immediately is the overcrowding issue. I know that is in Alabama. And the Governor, Governor Bentley, has spoken in detail about this new legislation that we passed.

I want to commend you for that.

I would like for people to realize that this does not put citizens at risk. And I think, Governor Bentley, you may want to expand on this, but that this has a program in place that monitors the prisoners once they are out of prison and in no way undermines public safety. Is that correct?

Governor BENTLEY. That is correct.

Mr. PALMER. What I would like to focus on right now is how we help these prisoners once they leave prison. San Francisco County Jail No. 5 offered inmates the opportunity to earn a high school diploma, and it cut the recidivism rate in half.

I just pulled up a RAND study. And the gentlelady, Ms. Plaskett, may be interested in this. Of the 700,000 individuals who are released from correctional facilities each year, roughly 100,000 of them are 24 years or younger. So there are a large number of young people being reintroduced.

In 2013, the Department of Education hosted two summits on education in correctional facilities, and they found that there were some—they made some policy recommendations that I think both Governor Bentley and Governor Markell might want to consider, and that is to improve the quality and availability of educational programs, including special education programs and programs for English language learners and career tech. They also recommended improving access to postsecondary education and career technical training and, thirdly, improve cross-system collaboration and appropriate information-sharing.

Now, the interesting thing—and Governor Bentley made the point about Alabama's pre-K program being ranked so high nationally. Our Internet-based learning, our access program, is ranked number one, or very high.

Has any thought been given to using online learning to educate prisoners, to allow them to earn a high school diploma or, in the cases for those that have a high school diploma, to earn a vocational degree or an associate's degree? And I pose that question to each of you.

Governor BENTLEY. Well, I think it is vital that we try to encourage those who are incarcerated to better themselves with education. If we do not do that, then, obviously, they are not going to survive when they get out.

And I do believe—and I discussed this on the plane coming up today—the next step, we need to get our workforce development program, our workforce development team that I have put together in the State, find out what jobs are available, what jobs are needed in the State, and then require our education entities, like our 2-year college system, like our 4-year college system, require them to be a part of this and bring people together so that education can be offered. And if the incarcerated individuals take advantage of that education, then they ought to be rewarded for that.

Mr. PALMER. Can I—Governor Markell, I am going to not allow you to answer because I want to make a point here in respect to what I think we might ought to consider.

And that is, if we set this up so that inmates who are eligible for parole, nonviolent offenders, do not have a high school degree or have a high school degree, if they earn their high school degree,

they earned a vocational degree or a 2-year degree, they would be immediately eligible for parole. And not only would it give them an incentive to get the educational attainment that they need, but this RAND report that I cited earlier found that there is a 43-percent lower rate of recidivism.

So if we could incentivize prisoners to get the education and the work skills that Governor Bentley mentioned, I think it would help us reduce our prison population and allow inmates to enter society again prepared to go to work.

Thank you, Mr. Chairman. I yield.

Mr. RUSSELL. Out of respect to the hard times that were requested by the Governors present, I would like, on behalf of Chairman Chaffetz and also Ranking Member Cummings, to thank the Governors for the insightful testimony and your leadership on these issues.

If there is no further business, without objection, the committee—

Mr. CUMMINGS. I would just like to thank—

Mr. RUSSELL. The chair will recognize the ranking member.

Mr. CUMMINGS. Again, I want to thank both of you for what you are doing.

And I think the key is, and part of, Mr. Chairman, what we are doing here, is amplifying what you are doing in hopes that other people will see it, other leaders will see it, and be bold enough to take the steps that you are taking. So then you would have best practices, and hopefully they spread.

And thank you very much. And we also thank your State legislators.

Mr. RUSSELL. And I would like to echo the ranking member's comments. There is a lot of innovative approaches, and these are things that we can all learn from.

If there is no further business, without objection, the committee will stand adjourned.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD



## SOUTH CAROLINA SENTENCING REFORM OVERSIGHT COMMITTEE

### Status Report (June 2015)

South Carolina's prison population nearly tripled between 1983 and 2009, rising from approximately 9,000 inmates to more than 25,000. During this span, annual operating costs for prisons grew more than 500%, from \$63.7 million to \$394 million. Absent policy changes, the state correctional population was projected to grow by another 3,200 inmates within five years (to approximately 28,000) while costing taxpayers an additional \$141 million in annual operating expenditures and \$317 million for the construction of more prison space.

These trends led state lawmakers to pass the Omnibus Crime Reduction and Sentencing Reform Act, which Governor Mark Sanford signed into law on June 2, 2010. The law (Act 273) sought to use tax dollars more effectively and improve public safety by concentrating prison space on high-risk and violent offenders, requiring supervision for those leaving prison, and improving the quality of supervision for those on probation and parole in an effort to reduce recidivism.

Five years after the enactment of the law, South Carolina is seeing significant successes.

#### Prisons and Crime

- The average daily prison population has declined 9.5% to 21,815.
  - The prison population is now 22% lower than what was projected.
  - The number of nonviolent inmates has declined 30%, while the number of violent inmates has increased 6%.
- Annual admissions to the Department of Corrections have decreased 27% to 9,136.
  - Annual admissions of nonviolent offenders have declined 31%, while admissions of violent offenders have declined 4.3%.
  - Annual admissions of offenders who failed to comply with probation or parole conditions (known as "compliance revocations") have fallen 46%.
- The Department of Corrections has closed 2.5 prison facilities.

- According to FBI statistics, between 2010 and 2013 (the most recent year for which data are available), South Carolina's violent crime rate declined 16%, while its property crime rate decreased 7%.

#### Probation and Parole

- The share of probationers who successfully completed their periods of supervision has increased 12%, to 77% of those on probation.
- The share of parolees who successfully completed their periods of supervision has increased 9%, to 90% of those on parole.
- The number of offenders who have had their probation or parole supervision revoked for conditions violations has decreased 46%.
- The number of offenders who have had their probation or parole supervision revoked for new crimes has decreased 17%.
- The use of administrative sanctions in place of prison as a penalty for probation and parole violations has increased 51%.
- The number of offenders who have earned compliance credits while on probation or parole, allowing the offenders to shorten periods of supervision, has increased 261%.

#### Savings and Reinvestment

- State correctional savings from the Omnibus Crime Reduction and Sentencing Reform Act total at least \$18.7 million, in addition to the avoided costs of not housing 6,000 more inmates who were projected to be in prison.
- Total available reinvestment of savings from the law into public safety improvements amounts to \$6.1 million.
- The Clemson Institute for Economic and Community Development has estimated that the law resulted in 982 new jobs, and a \$37 million increase in the state's gross product and other economic and social benefits. According to the study, individuals who were diverted away from prison under the law created these benefits by obtaining employment and contributing to the State economy through personal spending.

*The Omnibus Crime Reduction and Sentencing Reform Act established the South Carolina Sentencing Reform Oversight Committee to oversee the act's implementation.*

July 14, 2015

The Honorable Jason Chaffetz  
Chairman  
U.S. House of Representatives  
Committee on Oversight  
& Government Reform  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
U.S. House of Representatives  
Committee on Oversight  
& Government Reform  
Washington, DC 20515

**Re: Statement of Principles Necessary for Broad-Based Criminal Justice Reform**

Dear Chairman Chaffetz and Ranking Member Cummings:

On behalf of the **sixty (60) undersigned organizations**, representing faith leaders, criminal justice reform groups, and civil and human rights advocates, we urge you to support and advance criminal justice legislative reforms aimed at meaningfully addressing the primary drivers of dangerous overcrowding, unsustainable costs, and unwarranted racial disparities in the federal prison system.

The U.S. Department of Justice (“DOJ” or “Department”) continues to face unsustainable growth in the federal prison population and costs that consume an ever greater share of the Department’s budget. The federal prison population has increased from approximately 25,000 in FY1980 to slightly over 208,000 today.<sup>1</sup> The Bureau of Prisons’ (BOP) budget has also doubled over the past decade, reaching its current level of \$7.2 billion in the President’s FY16 budget request, approximately 25 percent of the Department of Justice’s overall budget. Indeed, in 2014, the BOP’s budget grew at almost twice the rate of the rest of the Department of Justice.<sup>2</sup> Despite this growing budget, current BOP Director Charles Samuels has acknowledged that, under current conditions, the system is over-capacity and jeopardizing the safety of staff and prisoners.<sup>3</sup> Several recent studies have concluded that mandatory minimum sentences, particularly for drug offenses, are the leading contributor to our burgeoning federal prison population. Both the human and economic costs of mandatory minimum sentencing are great. In its 2011 report to Congress, the U.S. Sentencing Commission found that mandatory minimum sentences disproportionately impact communities of color<sup>4</sup> and that African

<sup>1</sup> FEDERAL BUREAU OF PRISONS, STATISTICS: TOTAL FEDERAL INMATES, (2015), *available at* [http://www.bop.gov/about/statistics/population\\_statistics.jsp](http://www.bop.gov/about/statistics/population_statistics.jsp).

<sup>2</sup> MICHAEL E. HOROWITZ (INSPECTOR GENERAL, BUREAU OF PRISONS), TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE DEPARTMENT OF JUSTICE 2014. (2014).

<sup>3</sup> CHARLES E. SAMUELS, JR. (DIRECTOR, FEDERAL BUREAU OF PRISONS). TESTIMONY ON OVERSIGHT OF THE FEDERAL PRISON SYSTEM BEFORE THE JUDICIARY COMMITTEE OF THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON CRIME. (2013).

<sup>4</sup> USSC. REPORT TO CONGRESS, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, (2011), *available at*



Americans received relief from mandatory minimum sentences *least* often, compared with Whites and Hispanics.<sup>5</sup>

Bipartisan legislation has been introduced in both the House and Senate that aims to achieve the goals of reducing excessive incarceration and racial disparities in the federal prison system. We urge you to build on this bipartisan momentum by supporting criminal justice reforms that embrace the following principles:

- Restore proportionality to drug sentencing
- Promote and adequately fund recidivism reduction and reentry programming
- Make sentencing reductions retroactive
- Expand BOP's Compassionate Release Program
- Expand time credits for good behavior

We believe these principles will effectively address growing prison costs and populations while protecting public safety.

#### **Restore proportionality to drug sentencing**

Currently, almost half of the federal prison population is composed of people convicted of drug offenses. The combination of large-scale drug prosecutions and mandatory sentencing results in excessive prison terms for far too many people, while providing little public safety benefit, at great expense.

While drug trafficking is a serious problem, the lengthy mandatory minimum terms of five, 10, and 20 years or life in prison for these offenses often do not fit the crime. These mandatory sentences cost taxpayers billions of dollars, have filled federal prisons to at least 125 percent of their capacity, and put strain on funding for other DOJ priorities that protect the public. These problems cannot be adequately addressed without reforming excessive mandatory penalties, particularly for nonviolent drug offenses. Congress should also expand the federal safety valve to allow for more people convicted of low-level drug offenses to qualify for sentences below the mandatory minimum.

Moreover, under federal law, if a person has two prior felony drug convictions, the 10-year mandatory minimum sentence can be converted to mandatory life.<sup>6</sup> Nearly two-thirds of prisoners serving a term of life without parole (LWOP) for nonviolent offenses nationwide are in the federal system, and of these, 96 percent are serving LWOP for drug crimes.<sup>7</sup> Congress should reduce the sentence for people with two prior drug convictions from the possibility of life without parole.

#### **Promote and adequately fund recidivism reduction and re-entry programming**

We note the importance of supporting initiatives that aim to assist in effective recidivism reduction and re-entry programming as well as provide opportunities for early release for individuals in federal prison. Ninety-five percent of incarcerated individuals will return to our communities, and in the interest of public safety, we must ensure that they are on a

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[http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Mandatory\\_Minimum\\_Penalties/20111031\\_RtC\\_PDF/Executive\\_Summary.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_PDF/Executive_Summary.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> 21 U.S.C. § 841 (2014); 21 U.S.C. § 851 (2014) (outlining the procedural requirements to establish prior convictions).

<sup>7</sup> AMERICAN CIVIL LIBERTIES UNION, A LIVING DEATH LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES, (2013), available at <https://www.aclu.org/living-death-sentenced-die-behind-bars-what>

path for successful reintegration back into society while in prison and upon their release. It is a smart investment to implement expanded re-entry programming, given that evidence-based programs, job-training, and education can reduce recidivism and lead to better outcomes for individuals returning to their families and neighborhoods. A criminal record can prevent individuals from obtaining employment, housing, and education. Moreover, the felony drug ban imposes a lifetime restriction on welfare and food stamp benefits for anyone convicted of a state or federal drug felony, subjecting an estimated 180,000 women in the 12 most impacted states to a lifetime ban on welfare benefits.<sup>8</sup> Such collateral consequences are counterproductive to building safe and healthy communities. In order to help people reentering our communities to be successful, there should be an opportunity to seal past criminal records and reinstate benefits for individuals excluded because of a criminal record.

#### **Make sentencing reductions retroactive**

If Congress decides to reduce sentencing schemes and a person is serving a sentence under the old law that would no longer be available under the new law, then that person should benefit from the reduction. Specifically, congress should pass legislation to extend the application of the Fair Sentencing Act of 2010 to people who were sentenced prior to enactment of the new law.

#### **Expand BOP's Compassionate Release Program**

Under the Sentencing Reform Act of 1984, Congress authorized the Federal Bureau of Prisons (BOP) to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances - also known as compassionate release. The request can be based on either medical or non-medical conditions that the judge could not reasonably have foreseen at the time of sentencing. In 2013, BOP expanded the medical criteria that can be considered for inmates seeking compassionate release. In addition, the Attorney General announced revised criteria for other categories of inmates seeking reduced sentences, including older prisoners and certain inmates who are the only possible caregiver for their dependents. Congress could reduce the BOP population and the cost associated with housing older and ill prisoners by amending federal law to include these administrative changes.

#### **Expand time credits for good behavior**

The federal prison system's method of calculating earned credit reduces a prisoner's sentence to a maximum credit of 47 days per year – below the 54 days intended. This decision results in unnecessary increases in prison sentences at significant cost. By clarifying the statutory language, Congress could save an estimated \$41 million in the

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<sup>8</sup> THE SENTENCING PROJECT, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FEDERAL DRUG BAN ON WELFARE BENEFITS, (2013) available at [http://sentencingproject.org/doc/publications/cc\\_A%20Lifetime%20of%20Punishment.pdf](http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf).

first year alone.<sup>9</sup> Congress should also implement a proposal creating a new time credit that can be earned for successful participation in recidivism-reduction programs, such as education or occupational programming.

We believe the principles outlined above will help improve the effectiveness and fairness of our federal justice system. Our continued progress toward meeting the economic and societal challenges posed by the current prison system and establishing a smarter, fairer criminal justice system depends on a broad-based approach to reform, grounded in these principles. If you have any questions or concerns, please feel free to contact Jesselyn McCurdy, Senior Legislative Counsel, ACLU at [jmccurdy@aclu.org](mailto:jmccurdy@aclu.org) or 202-544-1681 or Jeremy Haile, Federal Advocacy Counsel, The Sentencing Project at [jhaile@sentencingproject.org](mailto:jhaile@sentencingproject.org) or 202-628-0871.

Sincerely,

American Civil Liberties Union  
 African Methodist Episcopal Church, Social Action Commission  
 Alliance of Baptists  
 Blacks in Law Enforcement of America  
 Bread for the World  
 Brennan Center for Justice at NYU School of Law  
 Broken No More  
 Church of Scientology National Affairs Office  
 Church of the Brethren, Office of Public Witness  
 Citizens Opposing Prohibition  
 Criminal Justice Policy Foundation  
 Crossroad Bible Institute  
 Disciples Justice Action Network  
 Drug Policy Alliance  
 Drug Policy Forum of Hawai'i  
 Drug Policy Forum of Texas  
 Ella Baker Center for Human Rights  
 Families ACT! (CA)  
 Families Against Mandatory Minimums  
 FedCURE  
 Friends Committee on National Legislation  
 Housing Works  
 Human Rights Watch  
 Justice Strategies  
 Law Enforcement Against Prohibition  
 Lawyers' Committee for Civil Rights Under the Law  
 Leadership Conference on Civil and Human Rights  
 Life for Pot

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<sup>9</sup> U.S. DEPARTMENT OF JUSTICE, FY 2012 BUDGET REQUEST, (2012), <http://www.justice.gov/sites/default/files/jmd/legacy/2014/01/12/fy12-bud-summary-request-performance.pdf>

Mennonite Central Committee, U.S. Washington Office  
 NAACP  
 NAACP, Legal Defense Fund, Inc.  
 National African American Drug Policy Coalition, Inc.  
 National Alliance for Medication Assisted Recovery  
 National Association of Criminal Defense Lawyers  
 National Council of Churches, USA  
 National Council of Jewish Women  
 National Organization for the Reform of Marijuana Laws  
 National Organization for Women  
 National Religious Campaign Against Torture  
 NETWORK, A Catholic Social Justice Lobby  
 Prison Policy Initiative  
 Public Justice Center (PA)  
 Remove Intoxicated Drivers  
 Safe Streets Arts Foundation (DC)  
 Sisters of Mercy of the Americas-Institute Justice Team  
 StoptheDrugWar.org  
 Student Peace Alliance  
 Students for Sensible Drug Policy  
 T'ruah: The Rabbinic Call for Human Rights  
 The Aleph Institute  
 The Center for Church and Prisons, Inc.  
 The Daniel Initiative  
 The November Coalition  
 The Peace Alliance  
 The Real Cost of Prisons Project  
 The Sentencing Project  
 United Church of Christ, Justice and Witness Ministries  
 United Methodist Church, General Board of Church and Society  
 Virginians Against Drug Violence  
 WOLA (Washington Office on Latin America)

**cc:** House Oversight and Government Reform Members

**Written Testimony of**

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**to the**

**U.S. House of Representatives Committee on Oversight and**  
**Government Reform**

**on**

**“Criminal Justice Reform, Part II”**

**Wednesday, July 15, 2015**  
**10:00 AM**  
**Rayburn House Office Building**  
**Room 2154**

Thank you for holding this hearing on justice reform. FreedomWorks is ecstatic that the esteemed members of this committee are discussing this important issue today. Our community of 7 million liberty-loving activists is calling for movement on legislation that will begin to lessen the impact of costly big government mandates in the courtroom and the prison system.

Speaking at a luncheon for the U.S. Sentencing Commission in 1993, then-Chief Justice William Rehnquist explained, “[M]andatory minimums have...led to an inordinate increase in the federal prison population and will require huge expenditures to build new prison space.”<sup>1</sup> His comments were prescient.

The federal prison system has seen a population explosion since 1980, rising from some 25,000 inmates to approximately 208,500 today.<sup>2</sup> At the federal level, in FY 2014, nearly 32 percent of federal offenders are drug offenders.<sup>3</sup> Of these drug offenders, 62 percent are classified in Category I and Category II, meaning that they have little to no criminal history.<sup>4</sup>

The reliance on incarceration has had a serious budgetary impact. Between FY 2000 and FY 2015, the Federal Bureau of Prisons’ budget grew by roughly 88 percent. The cost of housing just one prisoner annually jumped from \$21,603 in FY 2000 to nearly \$30,000 in FY 2013.<sup>5</sup> The extraordinary growth in the BOP’s budget is a cause for concern as it swallows up funding for other areas of law enforcement.

Additionally, the stunning growth in the federal prison population has taken a toll on our prison infrastructure. The Congressional Research Service notes “the federal prison system was 36% over its rated capacity in FY 2013, but high- and medium-

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<sup>1</sup> Dave Kopel, *Prison Blues: How America’s Foolish Sentencing Policies Endanger Public Safety*, Cato Institute, May 17, 1994  
<http://www.cato.org/pubs/pas/pa-208.html>

<sup>2</sup> Federal Bureau of Prisons, Federal Prison Population Statistics  
[http://www.bop.gov/about/statistics/population\\_statistics.jsp](http://www.bop.gov/about/statistics/population_statistics.jsp)

<sup>3</sup> U.S. Sentencing Commission, *2014 Sourcebook of Federal Sentencing Statistics*, Offenders in Each Primary Offense Category (Figure A)  
<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/FigureA.pdf>

<sup>4</sup> U.S. Sentencing Commission, *2014 Sourcebook of Federal Sentencing Statistics*, Criminal History Category of Drug Offenders in Each Drug Type (Table 37)  
<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table37.pdf>

<sup>5</sup> Nathan James, Congressional Research Service, *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options*, April 15, 2014  
<https://www.fas.org/sgp/crs/misc/R42937.pdf>

security male facilities were operating at 52% and 45%, respectively, over rated capacity."<sup>6</sup>

States have also seen booming prison populations and, with support from governors and lawmakers, have enacted innovative sentencing reforms to lessen the strain on their budgets. By getting "smart on crime" through a new focus on treatment and rehabilitation as alternatives to incarceration, they have freed up money to reinvest in public safety. These reforms have been successful, as crime and recidivism rates have fallen in states like Georgia and Texas. Both states saw significant cost-savings.

Sentencing low-level, non-violent offenders to the long prison stints often required by mandatory minimums isolates people from their families and communities in prisons that fail to rehabilitate and has the potential to set off a cycle of crime and poverty. These sentences ravage entire communities, according to the recent National Research Council of the National Academies study, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*.

"Mandatory prison sentences, intensified enforcement of drug laws, and long sentences contributed not only to overall high rates of incarceration, but also especially to extraordinary rates of incarceration in black and Latino communities. Intensified enforcement of drug laws subjected blacks, more than whites, to new mandatory minimum sentences—despite lower levels of drug use and no higher demonstrated levels of trafficking among the black than the white population," the study found. "Blacks had long been more likely than whites to be arrested for violence. But three strikes, truth-in-sentencing, and related laws have likely increased sentences and time served for blacks more than whites. As a consequence, the absolute disparities in incarceration increased, and imprisonment became common for young minority men, particularly those with little schooling."<sup>7</sup>

"The rise in incarceration rates marked a massive expansion of the role of the justice system in the nation's poorest communities. Many of those entering prison come from and will return to these communities. When they return, their lives often continue to be characterized by violence, joblessness, substance abuse, family breakdown, and neighborhood disadvantage. The best evidence to date leaves uncertain the extent to which these conditions of life are themselves exacerbated by incarceration. It is difficult to draw strong causal inferences from the research, but there is little question that incarceration has become another strand in the complex combination of negative conditions that characterize high-poverty communities in U.S. cities," the study added.<sup>8</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> National Research Council of the National Academies, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press, 2014 [http://johnjay.jjay.cuny.edu/nrc/NAS\\_report\\_on\\_incarceration.pdf](http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)

<sup>8</sup> *Ibid.*

The U.S. Sentencing Commission has recognized the problems in current sentencing guidelines, which is why, in 2011, commissioners recommended that Congress expand the “safety valve” to “include certain offenders who receive two, or perhaps three, criminal history points under the guidelines.”<sup>9</sup> The Commission also noted that mandatory minimum sentences should “not be excessively severe” and “narrowly tailored to apply only to those offenders who warrant such punishment.”<sup>10</sup>

While some believe mandatory minimum sentences are necessary to target drug kingpins, it is low-level offenders who more often feel the brunt of them. Judge William Wilkins, who served as the first chairman of the U.S. Sentencing Commission, once observed: “There are few Federal judges engaged in criminal sentencing who have not had the disheartening experience of seeing major players in crimes before them immunize themselves from the mandatory minimum sentences by blowing the whistle on their minions, while the low-level offenders find themselves sentenced to the mandatory minimum prison term so skillfully avoided by the kingpins.”<sup>11</sup>

In February, FreedomWorks released a letter of support for the Smarter Sentencing Act, S. 502.<sup>12</sup> This bill does not eliminate mandatory minimums or reduce maximum sentences. However, it would reduce minimum sentences for non-violent, low-level offenders by half and expand “safety valve” eligibility for qualifying offenders.

The Smarter Sentencing Act is grounded in fiscally conservative principles. A previous iteration of the bill would have saved a net \$3 billion over ten years.<sup>13</sup> Long-term savings could reach nearly \$24 billion.<sup>14</sup>

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<sup>9</sup> U.S. Sentencing Commission, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, October 2011

[http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter\\_12.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_12.pdf)

<sup>10</sup> *Ibid.*

<sup>11</sup> Judge William W. Wilkins, Jr., Testimony Before the Subcommittee on Crime and Criminal Justice of the House of Representatives Committee on the Judiciary, July 28, 1993

<sup>12</sup> Matt Kibbe, *Tell Your Members of Congress: Support the Smarter Sentencing Act*, FreedomWorks.org, February 12, 2015

<http://www.freedomworks.org/content/tell-your-members-congress-support-smarter-sentencing-act>

<sup>13</sup> Congressional Budget Office, S. 1410, Smarter Sentencing Act of 2014, September 11, 2014 <https://www.cbo.gov/publication/45710>

<sup>14</sup> Jane Hamshire, *DOJ Says Smarter Sentencing Act Would Save Taxpayers \$24 Billion*, FireDogLake, July 25, 2014 <http://news.firedoglake.com/2014/07/25/fdl-exclusive-doj-says-smarter-sentencing-act-would-save-taxpayers-24-billion/>



The Smarter Sentencing Act not only has the full support of FreedomWorks, but also several other conservative and libertarian organizations<sup>15</sup> – including Americans for Tax Reform, Heritage Action, and Young Americans for Liberty – and faith-based groups – such as the Faith and Freedom Coalition, the Family Research Council, and the Justice Fellowship.<sup>16</sup>

Another bipartisan reform effort that would address both sentencing reform and prison reform is the Safe, Accountable, Fair, Effective (SAFE) Justice Act, H.R. 2944. This bill takes a different approach to sentencing reform by limiting mandatory minimum drug sentences to the highest-level drug offenders, which is in line with Congress's original intent for the law. The bill would also give prisoners time credits for completing rehabilitative programming.

Whichever route Congress chooses, it has several widely-supported justice reform proposals that will meaningfully scale back and/or reduce mandatory minimum drug sentences, the driving force behind federal prison population, and cost growth. Restoring congressional intent to sentencing and responsibly reducing prison populations while ensuring cost-savings can be accomplished. We encourage Congress to pursue these reforms this year.

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<sup>15</sup> Coalition Letter to the Honorable Charles Grassley, the Honorable Patrick Leahy, the Honorable Bob Goodlatte, and the Honorable John Conyers, April 21, 2015 <http://famm.org/wp-content/uploads/2015/04/Conservatives-Sign-on-Letter-in-Support-of-114th-SSA-4.21.15.pdf>

<sup>16</sup> Coalition Letter to the Honorable Charles Grassley, the Honorable Patrick Leahy, the Honorable Bob Goodlatte, and the Honorable John Conyers, April 29, 2015 <http://famm.org/wp-content/uploads/2015/02/Faith-Group-SSA-2015-Signon-letter.pdf>

**Remarks of Congressman Robert C. “Bobby” Scott  
House Oversight and Government Reform Committee  
“Criminal Justice Reform Hearings – Part I - Members”  
Rayburn House Office Building Room 2154  
Tuesday, July 14, 2015  
9:45 a.m.- 11:30 a.m.**

I want to begin by thanking Chairman Chaffetz and Ranking Member Cummings for including me in today’s hearing. Chairman Chaffetz, in both the Judiciary and Oversight Committees, your commitment to improving our federal criminal justice system has been a major factor leading us to examine accountability-based approaches that rein in soaring costs that generate low returns on our investment in the criminal justice system. Your work has been especially effective in the area of prison reform.

Ranking Member Cummings has similarly led the way in ensuring that our law enforcement officers and communities they serve receive the resources and support they need to work collaboratively together in crime prevention, intervention, and re-entry.

Unfortunately, this rational approach is not the norm. Too many politicians across the nation often choose to play politics with crime

policy by enacting so-called "tough on crime" slogans such as "three strikes and you're out" or rhymes like "you do the adult crime, you do the adult time." As appealing as these policies may sound, their impact has overloaded our prisons, and it has gotten to the point that some recent studies have concluded that our overincarceration is actually COUNTERPRODUCTIVE-- meaning that it destroys so many families, wastes so much money, and results in so many people with felony records that it generates more crime than it stops!

We knew we had a problem, so faced with overcrowded federal prisons, no reduction in recidivism, and wasted resources, Chairman Sensenbrenner and I were chosen unanimously by our colleagues on the House Judiciary Committee to lead the Overcriminalization Task Force to do something about it. The Task Force undertook a comprehensive review of federal legislative, charging, sentencing, and re-entry policies. It applied the work of states, which have implemented bi-partisan evidence-based reforms that have reduced overcrowding and taxpayer spending while preserving—and even increasing—public safety.

Over the course of a year and a half and ten hearings, the Task Force heard from key stakeholders, including the Department of Justice, the Federal Public Defenders, the Judicial Conference, and the Sentencing Commission, as well as academics, and expert organizations, from the Heritage Foundation to the ACLU.

As the Task Force consensus work product, we introduced the bipartisan SAFE Justice Act, which improves safety and saves money by applying state-tested, evidence-based approaches to diversion, sentencing, recidivism-reduction rehabilitation programs, re-entry, and supervision.

During the inception and duration of the Task Force, my colleague Chairman Sensenbrenner and I were not interested in playing politics with crime policy. We did not conduct polls to measure the popularity of slogans and soundbites that the bill could generate. To the contrary, we focused our work on examining evidence-based approaches that increase safety, accountability, fairness, and efficacy, including ones successfully implemented on the state level.

32 states have reduced both their crime rate and imprisonment rate over the past 5 years, from Texas and Wisconsin to Rhode Island, from Georgia and South Carolina to New York, resulting in cumulative cost-savings exceeding \$4.6 billion. They have reinvested in prison alternatives better at breaking the cycle of recidivism. And today, research-based, state-tested, and community-based approaches enjoy support from Republican and Democratic governors. Many have branded their approach as “Right on Crime.”

**To address this crisis, the bill begins by focusing on prevention and early intervention.** We need to put evidence-based and cost-effective approaches to crime reduction into play at the community level. First, we need to invest in law enforcement on a local, state, and federal level. The data show that it is not the length of the sentence that deters someone from committing crime, but rather the certainty of being caught. We must invest in that by hiring more law enforcement and correctional officers and increasing their pay and reimbursing them for pursuing advanced degrees that aid their performance of their duties.

We must improve officer safety by ensuring that they have bulletproof vests, pepper spray, and lightweight hemorrhage kits to ensure that they return home to the families at the end of their shifts. Implementing a National Blue Alert system to ensure a swift and certain response when one of our officers is killed in the line of duty is also necessary and long overdue.

This also improves public safety and community trust. More law enforcement officers means greater opportunities to focus on community-based policing. Law enforcement officers play a critical role in putting evidence-based and cost-effective approaches to crime prevention, intervention, and reduction into play at the community level with full community involvement. As lawmakers, we need to engage community leaders ranging from law enforcement officials to educators to health and mental health agencies to social service providers, including faith-based and community organizations to identify the community's needs with regard to youth and gang violence prevention and develop a plan to address those needs.

Research has demonstrated that having a representative police force and investing in police athletic leagues and other programs that build strong community ties not only lower crime and allegations of racial profiling but also cultivate trust, build mutual respect and fairness, and improve the working relationship between officers and the communities they serve.

**Turning to criminal law, the federal government has added more than 4,500 new federal criminal penalties over the past few decades, many of which lack proof of *mens rea*---or criminal intent!**

So some people are prosecuted when they don't even know that they have committed a crime. It has gotten so out of hand that we do not even have an accurate count of how many federal crimes there are. In fact, our appetite for overcriminalization has swept in many types of conduct that have been historically punished in state court or with a fine or other civil sanction.

It is also clear we must stop bringing state crimes and civil infractions into federal court. Why should carjacking be a federal crime? And can't some of the regulatory crimes be sanctioned with civil fines rather than criminal convictions?

And once in court, our bill creates federal problem-solving, evidence-based court programs, such as drug, mental health, substance abuse, and veterans court programs to divert non-violent, low-level, first-time Federal offenders from prison. Research has shown that providing these types of offenders the help they require in addressing the underlying issues that led them to violate the law provides a much greater return on investment than simply incarcerating them.

**The bill also reforms our sentencing laws, as my colleague Chairman Sensenbrenner discussed. This is yet another area in which states have led the way, particularly mandatory minimums in the drug context.** As of fiscal year 2014, approximately 2/3 of convicted federal drug defendants were convicted of offenses carrying a



mandatory penalty of some sort, even though data from the U.S. Sentencing Commission tells us the vast majority of them are the lowest-level, nonviolent offenders, not the drug kingpins or leaders for whom these penalties were intended. Our bill restores the original Congressional intent on these penalties and applies the evidence-based sentencing approaches from the states.

**Once an individual is sentenced to prison, the bill ensures that the time spent in prison is rehabilitative and will aid offenders in successfully re-entering society.** Following Chairman Chaffetz's work on prison reform, Chairman Sensenbrenner and I incorporated that work into the SAFE Justice Act as one of the key pillars. The research shows that by providing incentives to inmates to complete educational, vocational, substance abuse, mental health, and transitional programs, we can help reduce both recidivism and the amount of money spent on the federal prison system. The state experience and the data also show that unless and until we invest in research-based methods to address

underlying issues, we cannot be surprised if the cycle of recidivism continues.

Finally, by changing the incentives and motivations for offenders on supervised release, we ensure that swift and certain sanctions for violations are handled accountably and effectively. We also discourage unnecessary, often counterproductive, incarceration for technical violations of supervised release as such incarceration disrupts any re-entry progress in employment and housing. Moreover, by measuring the recidivism rates for halfway houses and probation officers nationwide, we can hold those facilities and offices accountable in their role in reducing risk factors for recidivism.

Chairman Chaffetz, as I have indicated, the provisions in this bill will save money. All of the new initiatives in the bill can be funded by reinvesting these savings so the bill essentially pays for itself.

I look forward to continuing to work with Chairmen Chaffetz and Ranking Member Cummings on moving this bi-partisan bill that

incorporates the work of the Over-Criminalization Task Force. This bill has strong bi-partisan support because it reduces crime and saves money. The passage of this bill will invest in crime prevention, reduce overreach in the federal criminal code, improve policing, reform sentencing, improve rehabilitation in our prisons, and will reform our federal criminal justice system into one that is safe, accountable, fair, and effective.

Thank you, Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee.

*Testimony Submitted for the Record*

*On behalf of the*

*United States Conference of Catholic Bishops’  
Committee on Domestic Justice and Human Development,*

*Catholic Charities USA,*

*and*

*The Society of St. Vincent de Paul*

*before the*

*House Committee on Oversight and Government Reform*

*“Criminal Justice Reform”*

*July 14, 2015*

### **Introduction**

The United States Conference of Catholic Bishops' (USCCB) Committee on Domestic Justice and Human Development, Catholic Charities USA (CCUSA), and the Society of St. Vincent de Paul (SSVDP) are grateful for the opportunity to provide this testimony for the hearing, *Criminal Justice Reform*, with the House Committee on Oversight and Government Reform.

The Catholic community brings both moral principles drawn from our faith tradition, and experience deeply rooted in communities throughout the country, in service to the common good. By our own efforts and our advocacy we promote justice, healing and restoration always focusing on the life and dignity of all persons.

Our Catholic tradition supports the community's right to establish and enforce laws that protect people and advance the common good. But our faith also teaches us that both victims and offenders have a God-given dignity that calls for justice and restoration, not vengeance. The bishops of the United States, in their 2000 pastoral statement, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, stated, "Just as God never abandons us, so too we must be in covenant with one another. We are all sinners, and our response to sin and failure should not be abandonment and despair, but rather justice, contrition, reparation, and return or re-integration of all into the community."

Pope Francis has said, "God is in everyone's life. Even if the life of a person has been a disaster, even if it is destroyed by vices, drugs or anything else—God is in this person's life." Pope Francis has called for a Jubilee Year of Mercy beginning in December. In response Christians will pray, reflect and make greater efforts to be witnesses of God's mercy especially where brokenness and harm have affected people's lives.

We join the Holy Father by calling on Congress to pass effective and reasonable legislation to reform our nation's sentencing and criminal justice policies. Doing so will help foster healing, mercy and restoration, rather than simply punishment.

### **Time for Criminal Justice Reform**

Congress has before it a great opportunity to pass substantive legislation to begin reform of our nation's broken criminal justice system. There is both bi-partisan support and agreement among a diverse body of advocates spanning the philosophical spectrum. In September as part of his trip to the United States, Pope Francis will visit a prison outside Philadelphia reflecting his consistent support for prisoners and for justice and mercy. What would be a better message from our government than to show the Holy Father our own commitment to these principles as reflected in our criminal justice system?

The United States imprisons more people than any other nation. As of 2011, approximately 7 million people were under some form of correctional control in the United States, with close to 2.2 million people incarcerated in federal, state or local prisons and jails. Although national incarceration rates have dropped in recent years, the federal incarceration rate has increased 500 percent during the past thirty years with close to half of those serving sentences for drug offenses.

Incarceration costs have quadrupled in the past two decades with our nation spending an average of \$29,000 annually per prisoner to house each. Statistics for 2010 indicate that annual incarceration costs for both state and federal governments were approximately \$80 billion with more than an 1100 percent increase in federal incarceration costs alone. Rigid sentencing policies for non-violent offenses have proven to be costly, ineffective and often detrimental to the good of persons, families and communities. Prolonged incarceration contributes to family instability and poverty. Those who finally leave incarceration face significant challenges upon reentering society, such as finding housing and stable employment, high rates of substance abuse, and physical and mental health challenges.

One-size-fits-all sentencing policies, such as mandatory minimums, are inadequate in addressing the complexities of crime and community safety. Instead of directing a vast amount of public resources to imprison more people and build more prisons and jails, government should support effective programs aimed at crime prevention, rehabilitation, education efforts, substance abuse treatment, as well as programs of probation, parole and reintegration.

More than 650,000 men, women and juveniles reenter society each year from federal and state prisons, local jails and detention centers. They face a myriad of challenges such as homelessness, obtaining the skills necessary to find gainful employment, and substance abuse and mental health challenges. Simply incarcerating people for unnecessarily lengthy sentences does not keep communities safe, increase the likelihood of true rehabilitation, nor meet our obligations to help restore our brothers and sisters to their communities.

It is simply too costly financially and in terms of lives negatively affected to continue to incarcerate people at this level. As Congress considers advancing legislation to address sentencing and other types of criminal justice reform, we offer these principles and priorities for consideration:

**Sentencing Reform:**

- Restore sentencing proportionality. Too often people are serving excessively long sentences even for non-violent offenses. Expand current judicial sentencing options related specifically to non-violent drug offenses;
- Permit reductions in mandatory minimum sentences for non-violent drug offenses and permit crack cocaine offenders to seek retroactively lighter sentences under the *2010 Fair Sentencing Act*;
- Expand earned time credits for good behavior: Prisoners who have committed non-violent offenses should be able to reduce the length of their sentences by successfully participating in recidivism reduction and reentry programs.

**Countering Recidivism**

- Promote and support recidivism reduction and reentry programs including: occupational and vocational training, mental health and substance abuse treatment, assistance to find housing and employment, mentoring and life skills

- coaching, and domestic violence deterrence classes;
- Remove barriers that prevent access to the Supplemental Nutrition Assistance Program (SNAP) and Federal Student Aid for formerly-incarcerated individuals so they are able to meet their basic needs and further their education;
- Promote partnerships with faith-based and community and non-profit organizations to provide recidivism reduction programs and services;

As recent data clearly illustrates, our nation's level of incarceration is simply too costly. Congress should support policies that call for cost savings resulting from reform legislation to be reinvested in programs and services that promote crime prevention, recidivism reduction programs, promote prison safety and reduce prison overcrowding.

#### **Promoting Justice and Restoration: The Catholic Experience**

Catholic institutions and organizations including Catholic Charities and the Society of St. Vincent de Paul, driven by our faith, continue to find means to serve as many persons and families as we can with our donated private resources.

Many Catholic Charities agencies run prison ministry programs in their dioceses. Dedicated clergy, religious and lay volunteers visit these detention facilities regularly to provide access to the Mass, spiritual counseling, sacramental preparation, religious education, pastoral counseling, and reading and prayer materials to Catholic inmates and others. These ministries help inmates feel connected to their faith and the Church, a meaningful service when they feel forgotten and cut off from their families and communities. Some ministries reach out to the families of inmates as well as crime victims to provide support and foster reconciliation.

As one of the nation's largest social service providers, Catholic Charities agencies see the many struggles that the formerly incarcerated face once they leave prison with only the clothes on their backs, no place to live, and very little money or possibly none at all. In response, Catholic Charities agencies provide a diverse array of services: 42 agencies nationwide provided temporary or transitional shelter to the formerly incarcerated and 44 agencies provide other programs specifically targeting current and former prisoners, reaching more than 40,000 people in 2014. Services to this population include residential services for adults as well as delinquent youth, mentorship programs, housing, education and training, counseling services, and victims' assistance.

The Society of St. Vincent de Paul (The Society) serves over 2 million people and families in need, with support primarily offered by volunteers and donations. In efforts to move people from poverty to sustainability and prosperity, The Society constantly encounters barriers that keep formerly incarcerated people from attaining success. In Los Angeles, a half-way house works with people who have been incarcerated for 20 years or more. In Orlando, volunteers offer housing, career planning and other support groups to returning citizens. The Society has also launched a five-city pilot project that is investing in the leadership of formerly incarcerated men and women. The goal is to develop community leaders who will help formerly incarcerated persons on their road to self-sufficiency. This project, coupled with The Society's model of visiting people in need in their homes, develops personal linkages with, and forms the catalyst for, job training and

counseling, employment, emotional guidance, family re-integration, and short-term financial support for housing, clothing and transportation. Importantly, ex-offenders themselves are coordinating the work in each of the five geographies to ensure that it is not “pie-in-the-sky” activity and theory, but truly meaningful for the returning citizens and their families.

**Conclusion**

The Catholic community brings a unique perspective to criminal justice policy reflected in our advocacy, service and ministry. Our work is deeply rooted in our Catholic social teaching tradition—a tradition which is nurtured by mercy and forgiveness. That mercy and forgiveness upholds the life and dignity of all people, even for those who have sinned against their sisters and brothers. Our witness and active presence in the life of communities includes many visits to prisons throughout this country and time spent with formerly incarcerated persons.

However, the faith community alone cannot reach the enormous numbers of people leaving our prisons today. Our broken criminal justice system is breaking up families and communities. The time for serious reform is now. We call on Congress to act and support smart and effective sentencing and criminal justice reform legislation that protects human life and dignity, ensures safe and peaceful communities, and promotes the common good.

